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Washington, Thursday, October 24, 1957

TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P. P. C. 620, Rev.]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—PINK BOLLWORM

REVISED ADMINISTRATIVE INSTRUCTIONS EXEMPTING CERTAIN ARTICLES FROM SPECIFIC REQUIREMENTS

Pursuant to pink bollworm quarantine No. 52 (7 CFR 301.52; 22 F. R. 7013), sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162), and section 106 of the Federal Plant Pest Act (Pub. Law 85-36), the administrative instructions appearing in 7 CFR 301.52a (22 F. R. 7016) are hereby revised to read as follows:

§ 301.52a *Administrative instructions exempting certain articles from specified requirements.* It has been found that facts exist as to the pest risk involved in the movement of the following regulated articles under the regulations in this subpart which make it safe to make less stringent the requirements of § 301.52-4 (a) with respect to the movement of such articles from any point in the regulated area into or through any point outside of the regulated area or from the generally infested area into or through the eradication area, as hereinafter provided. The following articles are hereby exempted from the requirements of § 301.52-4 (a) under the conditions set forth below:

(a) Compressed bale cotton lint moving by common carrier when such lint has been given standard or equivalent compression.

(b) Baled cotton lint moving from the generally infested area into the eradication area when the lint is from seed cotton produced in the eradication area and moved to the generally infested area for ginning.

(c) Samples of cotton lint and cotton linters of the usual trade size.

(d) Cottonseed cake.

(e) Cottonseed meal.

(f) Kenaf and edible okra produced in the eradication area (Arizona, Arkansas, Louisiana) or in Oklahoma or New Mexico.

(g) Edible okra produced in Texas during the period December 1 to April 30, inclusive.

(h) Edible okra produced in Texas during the period May 1 to November 30, inclusive, moving to the District of Columbia or to the following States or parts of States for immediate processing or consumption therein, when the containers are marked as noncertified Texas okra by a stamp as required by the inspector: Colorado, Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming, and that part of Virginia, Missouri, Illinois, and Kentucky north of the 38th parallel.

These administrative instructions shall become effective October 24, 1957.

The purpose of this revision is to limit the exemption relating to "baled cotton lint moving from the generally infested area into the eradication area" to lint that is from seed cotton produced in the eradication area and moved to the generally infested area for ginning. This limitation is considered necessary to prevent the spread of the pink bollworm into the eradication area. Therefore, the revision should be made effective as soon as practicable. Accordingly, it is found upon good cause that notice and other public procedure under the Administrative Procedure Act are impracticable and contrary to the public interest, and good cause is found for making the effective date thereof less than 30 days after its publication in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318, sec. 106, Pub. Law 85-36, 71 Stat. 33; 7 U. S. C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 21st day of October 1957.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F. R. Doc. 57-8753; Filed, Oct. 23, 1957; 8:48 a. m.]

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FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 728—WHEAT

SUBPART—1958-59 MARKETING YEAR

EXEMPTION OF CERTAIN WHEAT PRODUCERS FROM LIABILITY FOR MARKETING QUOTA PENALTIES WHERE ALL OF THE WHEAT CROP IS FED OR USED FOR SEED OR FOOD ON THE FARM; EXTENSION OF TIME FOR FILING APPLICATION

The amendment herein is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and is for the purpose of extending the final date for filing applications for an exemption under the regulations.

Since farmers in many areas have already seeded, or are preparing to seed, their 1958 crop of wheat it is imperative that they be notified of the amendment herein as soon as possible. Accordingly, it is hereby found that compliance with the public notice, procedure, and 30-day effective date provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest. Therefore, the amendment shall become effective upon the date of its publication in the FEDERAL REGISTER.

Section 728.842 is amended by striking out in the second sentence thereof the language "October 15" and inserting in lieu thereof "October 25".

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets or applies sec. 335, 52 Stat. 54, as amended; 7 U. S. C. 1335)

Done at Washington, D. C., this 22d day of October 1957.

[SEAL] TRUE D. MORSE, *Acting Secretary of Agriculture.*

[F. R. Doc. 57-8803; Filed, Oct. 23, 1957; 10:21 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Tangerine Reg. 193]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.866 *Tangerine Regulation 193*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Florida tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on October 22, 1957, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) Tangerine Regulation 192 (§ 933.863; 22 F. R. 8251) is hereby terminated effective at 12:01 a. m., e. s. t., October 25, 1957.

(3) During the period beginning at 12:01 a. m., e. s. t., October 25, 1957, and ending at 12:01 a. m., e. s. t., November 18, 1957, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, that do not grade at least U. S. No. 1; or

(ii) Any tangerines, grown in the State of Florida, that are of a size smaller than the size that will pack 176 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: October 22, 1957.

[SEAL] FLOYD F. HEDLUND, *Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 57-8811; Filed, Oct. 23, 1957; 11:23 a. m.]

Chapter XI—Agricultural Conservation Program Service, Department of Agriculture

PART 1105—AGRICULTURAL CONSERVATION; HAWAII

SUBPART 1958

The protection and conservation of the soil and water resources of farm and ranch lands is essential in order that these lands will continue to produce sufficient food and other raw materials to meet future needs. All people, not farmers and ranchers alone, have a stake in, and a part of the responsibility for, protecting and conserving our farm and ranch lands. Recognizing this, the Congress appropriates funds to share with farmers and ranchers the cost of carrying out needed soil and water conservation measures. The Agricultural Conservation Program is a means of making this Federal cost-sharing available to farmers and ranchers.

AUTHORITY: §§ 1105.700 to 1105.774 issued under sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interpret or apply secs. 7-17, 49 Stat. 1148, as amended, 71 Stat. 329; 16 U. S. C. 590g-590q.

INTRODUCTION

§ 1105.700 *Introduction.* (a) The United States Department of Agriculture offers every farmer and rancher in the Territory of Hawaii an opportunity to conserve and improve the productivity of their land through participation in the 1958 Agricultural Conservation Program.

(b) Under this program, part of the costs of the conservation practices is borne by the Government, and this represents the Nation's interest in what happens to its basic land and water resources.

(c) Costs will be shared on the performance of recommended practices at approved rates to the extent of available funds. Developed under the provisions of the Soil Conservation and Domestic Allotment Act, the program is designed to meet local conservation needs.

(d) The information contained in this subpart outlines the general provisions of the 1958 Agricultural Conservation Program for Hawaii and the general specifications and rates of Federal cost-sharing for practices.

GENERAL PROGRAM PRINCIPLES

§ 1105.701 *General program principles.* The 1958 Agricultural Conservation Program for Hawaii has been developed and is to be carried out on the basis of the following general principles:

(a) The program is confined to the conservation practices on which Federal cost-sharing is most needed in order to achieve the maximum conservation benefit in the Territory.

(b) The program is designed to encourage those soil and water conservation practices which provide the most enduring conservation benefits practicably attainable in 1958 on the lands where they are to be applied.

(c) Costs will be shared with a farmer or rancher only on satisfactorily performed soil and water conservation practices for which Federal cost-sharing was requested by the farmer or rancher before the conservation work was begun.

(d) Costs should be shared only on soil and water conservation practices which it is believed farmers or ranchers would not carry out to the needed extent without program assistance. In no event should costs be shared on practices except those which are over and above those farmers or ranchers would be compelled to perform in order to secure a crop.

(e) The rates of cost-sharing in the program are to be the minimum required to result in substantially increased performance of needed soil and water conservation practices within the limits prescribed.

(f) The purpose of the program is to help achieve additional conservation on land now in agricultural production rather than to bring more land into agricultural production. The program is not applicable to the development of new or additional farmland by measures such as drainage, irrigation, and land clearing. Such of the available funds that cannot be wisely utilized for this purpose will be returned to the public treasury.

(g) If the Federal Government shares the cost of the initial application of soil and water conservation practices which farmers and ranchers otherwise would not perform but which are essential to sound soil and water conservation, the farmers and ranchers should assume responsibility for the upkeep and maintenance of those practices through their life span. Cost-shares are not applicable, after they are initially utilized, to undertake a practice during its normal life span unless the practice has failed to serve for its normal life span due to conditions beyond the control of the farm or ranch operator.

DEFINITIONS

§ 1105.702 *Definitions.* For the purposes of the 1958 program:

(a) "Secretary" means the Secretary of the United States Department of Agriculture or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(b) "Administrator, ACPS," means the Administrator of the Agricultural Conservation Program Service.

(c) "State" means the Territory of Hawaii.

(d) "State Office" means the Hawaii Agricultural Stabilization and Conservation Office in Honolulu, Territory of Hawaii.

(e) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise, or other legal entity (and, wherever applicable, the Territory of Hawaii or a political subdivision or agency thereof) that, as landlord, tenant, or sharecropper, participates in the operation of a farm or ranch.

(f) "Farm" or "ranch" means (1) all adjoining or nearby and easily accessible farm, wood, or range land under the same ownership which is operated by one person, and (2) all additional farm, wood, or range land under different ownership operated by such person which the State Office determines (i) is nearby and easily accessible, (ii) is approximately equally productive, and (iii) for the past 2 years has been operated by such person and will be so operated during the current year, or has been operated by such person for 1 year with proof satisfactory to the State Office that it will be operated by such person for at least 2 more years. Notwithstanding the conditions set forth in subparagraphs (1) and (2) of this paragraph, fields and subdivisions of fields which are part of a farm or ranch shall remain a part of such farm or ranch when operated under a short term agreement by another operator, unless and until such fields or subdivisions of fields may be properly constituted as a separate farm or ranch or part of another farm or ranch under this definition. Land which is properly constituted as a farm or ranch shall not be reconstituted when a change of farm or ranch operators is the only basis for such action.

(g) "Cropland" means farmland which in 1957 was tilled or was in regular crop rotation, including also land which was established in permanent vegetative cover, other than trees, since 1953 and which was classified as cropland at the time of seeding, but excluding (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable noncrop open pasture, and (3) any land which constitutes, or will constitute if tillage is continued, an erosion hazard to the community.

(h) "Orchardland" means the acreage in planted fruit trees, nut trees, coffee trees, papaya trees, banana plants, or vineyards.

(i) "Pastureland" means farmland, other than rangeland, on which the predominant growth is forage suitable for grazing and on which the spacing of any trees or shrubs is such that the land could not fairly be considered as woodland.

(j) "Rangeland" means land which produces, or can produce, forage suitable for grazing by range livestock without cultivation or general irrigation.

(k) "Merchantable timber" means any processed or unprocessed timber which is sold for cash by the producer.

(l) "Forest Service" means the Division of Forestry, Territorial Board of Agriculture and Forestry.

ALLOCATION OF FUNDS

§ 1105.703 *Allocation of funds.* The amount of funds available for conservation practices under this program is $188,000. This amount does not include the amount set aside for administrative expenses and the amount required for increases in small Federal cost-shares in § 1105.718.

STATE AGRICULTURAL CONSERVATION PROGRAM

§ 1105.704 *Agencies participating in development of State program.* This program was developed within the pattern of the national program authorized by the Congress under the provisions of the Soil Conservation and Domestic Allotment Act of 1938, as amended. Adaptation to Hawaii's needs has been accomplished over a period of years through the cooperative assistance and advice of interested farmers and ranchers, as well as Government agency representatives from the Extension Service, Farmers Home Administration, Soil Conservation Service, Board of Agriculture and Forestry, and Agricultural Stabilization and Conservation Office. The program has been approved by the Administrator, ACPS, in Washington.

APPROVAL OF CONSERVATION PRACTICES

§ 1105.705 *Method and extent of approval.* The State Office will determine the extent to which program funds will be made available to share the cost of each approved practice on each farm or ranch, taking into consideration the available funds, the conservation problems of the individual farm or ranch and other farms and ranches, and the conservation work for which requested Federal cost-sharing is considered as most needed in 1958. The notice of approval shall show for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the Federal cost-share for the performance of that number of units of the practice. No practice may be approved for cost-sharing except as authorized by the program contained in this subpart, or in accordance with procedures incorporated therein. Available funds for cost-sharing shall not be allocated on a farm or acreage-quota basis, but shall be directed to the accomplishment of the most enduring conservation benefits attainable.

§ 1105.706 *Selection of practices.* (a) The practices included in the program are only those practices for which cost-sharing is essential to permit accomplishment of needed conservation work which would not otherwise be carried out.

(b) Each farmer or rancher shall be given an opportunity to request that the Federal Government share in the cost of those practices on which he considers he needs such assistance in order to permit their performance on his farm or ranch. The State Office, taking into consideration the farmer's or rancher's request and any conservation plan developed by the farmer or rancher with the assistance of any State or Federal agency, shall direct the available funds for cost-sharing to those farms and ranches and to those practices where cost-sharing is considered most essential to the accomplishment of the basic conservation objective of the Department—the use of each acre of agricultural land within its capabilities and the treatment of each acre in accordance with its needs for protection and improvement.

§ 1105.707 *Pooling agreements.* Farmers or ranchers in any local area may agree in writing, with the approval of the State Office, to perform designated amounts of practices which, by conserving or improving the agricultural resources of the community, will solve a mutual conservation problem on the farms of the participants. For purposes of eligibility for cost-sharing, practices carried out under such an approved written agreement will be regarded as having been carried out on the farms or ranches of the persons who performed the practices.

§ 1105.708 *Prior request for cost-sharing.* Costs will be shared only for those practices, or components of practices, for which cost-sharing is requested by the farmer or rancher before performance thereof is started. For practices for which (a) approval was given under the 1957 Agricultural Conservation Program, (b) performance was started but not completed during the 1957 program year, and (c) the State Office believes the extension of the approval to the 1958 program is justified under the 1958 program regulations and provisions, the filing of the request for cost-sharing under the 1957 program may be regarded as meeting the requirement of the 1958 program that a request for cost-sharing be filed before performance of the practice is started.

§ 1105.709 *Program year and technical aid.* (a) Costs will be shared at the rates specified and within the limitations set forth in this subpart for carrying out during the period from October 1, 1957, through December 31, 1958, the conservation practices, or components thereof, included in this subpart which are approved for a farm or ranch, except that for practices performed during the period October 1, 1957, through December 31, 1957, for which specifications and requirements are identical with those for comparable practices under the 1957 Agricultural Conservation Program, cost-share rates shall be those prescribed for the 1957 program.

(b) The Soil Conservation Service is responsible for the technical phases of the practices contained in §§ 1105.741, 1105.742, 1105.744, 1105.753, 1105.754, 1105.756 to 1105.762, 1105.764 to 1105.770, 1105.773, and 1105.774 (practices 1, 2, 4, 13, 14, 16 to 22, 24 to 30, 33, and 34). This responsibility shall include (1) a finding that the practice is needed and practicable on the farm, (2) necessary site selection, other preliminary work, and layout work of the practice, (3) necessary supervision of the installation, and (4) certification of performance. For the practice contained in § 1105.743 (practice 3), the Soil Conservation Service is responsible (1) for determining that the practice is needed and practicable on the farm, and (2) for necessary site selection, other preliminary work, and layout work of the practice. For the practices contained in §§ 1105.745 and 1105.752 (practices 5 and 12), the Soil Conservation Service is responsible for determining that the practice is needed and practicable on the farm. In addition, upon agreement of the State Office and the Territorial Conservationist of the Soil Conservation Service, responsibility for all or part of the unassigned technical phases of these or other practices may be assigned to the Soil Conservation Service. The Territorial Conservationist of the Soil Conservation Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities. The Soil Conservation Service will utilize to the full extent available resources of the Territorial forestry agency in carrying out its assigned responsibilities for the practice contained in § 1105.764 (practice 24).

(c) The Forest Service (Forestry Division, Territorial Board of Agriculture and Forestry) is responsible for the technical phases of the practice contained in § 1105.763 (practice 23). This responsibility shall include (1) providing necessary specialized technical assistance, (2) development of specifications for the practice, and (3) working through the State Office, determining compliance in meeting these specifications. The Forest Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities.

§ 1105.710 *Practice specifications and approval.* (a) Minimum specifications which practices must meet to be eligible for Federal cost-sharing are set forth in this subpart. Additional specifications may be secured from the State Office or the Soil Conservation Service Territorial Office in Honolulu.

(b) For those practices in this subpart which authorize Federal cost-sharing for minimum required applications of liming materials and commercial fertilizers, the minimum required application on which cost-sharing is authorized shall in each case be determined on the basis of current soil tests: *Provided, however,* That if the State Office determines available facilities are inadequate to provide the necessary tests, the minimum required applications of these materials shall be those recommended for the area by the Agricultural Extension Service. Liming materials contained in commercial fertilizers, phosphate rock, or basic slag will not qualify for Federal cost-sharing.

(c) Practice specifications shall provide minimum performance requirements which will qualify the practice for cost-sharing and, where applicable, may also provide maximum limits of performance which will be eligible for cost-sharing. The minimum performance requirements established for a practice shall represent those levels of performance which are necessary to assure a satisfactory practice. The maximum limits of performance for cost-sharing established for a practice shall represent those levels of performance which are needed in order for the practice to be most effective in meeting the conservation problem and which are not in excess of levels for which cost-sharing can be justified.

(d) Costs for the practices contained in §§ 1105.743, 1105.746 to 1105.748, 1105.763, 1105.764, and 1105.772 (practices 3, 6 to 8, 23, 24, and 32) may be shared even though a good stand is not established, if the State Office determines, in accordance with approved standards, that the practices were carried out in a manner which would normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the farm or ranch operator. The State Office may require as a condition of cost-sharing in such cases that the area be reseeded or replanted, or that other needed protective measures be carried out.

§ 1105.711 *Completion of practices.* Federal cost-sharing for the practices contained in this subpart is conditioned upon the performance of the practices in accordance with all applicable specifications and program provisions. Except as provided in §§ 1105.712 and 1105.713, practices must be completed during the program year in order to be eligible for cost-sharing.

§ 1105.712 *Practices substantially completed during program year.* Approved practices may be deemed, for purposes of payment of cost-shares, to have been carried out during the 1958 program year, if the State Office determines that they are substantially completed by the end of the program year. However, no cost-shares for such practices shall be paid until they have been completed in accordance with all applicable specfications and program provisions, except as provided in § 1105.713.

§ 1105.713 *Practices requiring more than one program year for completion.* Cost-shares approved under the 1958 program will not be considered as earned until all components of the approved practices are completed in accordance with all applicable specifications and program provisions. Cost-shares for completed components may be paid only after the practice is substantially completed, and only on the condition that the farmer or rancher will complete the remaining components of the practice within the time prescribed by the State Office which will afford the farmer or rancher a fair and reasonable opportunity to complete them, unless prevented from doing so for reasons beyond his control and regardless of whether cost-sharing therefor is offered, or refund the cost-shares paid to him. If an approved practice is not substantially completed by the end of the 1958 program year, the practice may be considered for reapproval under the 1959 program.

§ 1105.714 *Initial establishment or installation of practices.* Under the initial establishment principle as it applies to the 1958 program, Federal cost-sharing may be authorized for the first establishment or installation of a practice with cost-sharing since the 1953 program on a particular piece of land while under the control of the current operator. Federal cost-sharing may also be authorized for replacement, enlargement, or restoration of practices for which cost-sharing has been allowed since the 1953 program if the practice has served for its normal life span, or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to meet the conservation problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The State Office believes that the replacement, enlargement, or restoration of the practice merits consideration under the program to an equal extent with other practices for which cost-sharing has not been allowed under a previous program.

§ 1105.715 *Repair, upkeep, and maintenance of practices.* Federal cost-sharing is not authorized for repairs or for normal upkeep or maintenance of any practice.

FEDERAL COST-SHARES

§ 1105.717 *Division of Federal cost-shares*—(a) *Federal cost-shares.* The Federal cost-share attributable to the use of conservation materials or services shall be credited to the person to whom the materials or services are furnished. Other Federal cost-shares shall be credited to the person who carried out the practices by which such other Federal cost-shares are earned. If more than one person contributed to the carrying out of such practices, the Federal cost-share shall be divided among such persons in the proportion that the State Office determines they contributed to the carrying out of the practices. In making this determination, the State Office shall take into consideration the value of the labor, equipment, or material contributed by each person toward the carrying out of each practice on a particular acreage, and shall assume that each contributed equally unless it is established to the satisfaction of the State Office that their respective contributions thereto were not in equal proportion. The furnishing of land or the right to use water will not be considered as a contribution to the carrying out of any practice.

(b) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any person, any Federal share of the cost due him shall be paid to his successor, determined in accordance with the provisions of the regulations in ACP-122, as amended (Part 1108 of this chapter).

§ 1105.718 *Increase in small Federal cost-shares.* The Federal cost-share computed for any person with respect to any farm or ranch shall be increased as follows: *Provided, however,* That in the event legislation is enacted which repeals or amends the authority for making such increases, the Secretary may, in such manner and at such time as is consistent with such legislation, discontinue such increases:

(a) Any Federal cost-share amounting to $0.71 or less shall be increased to $1.

(b) Any Federal cost-share amounting to more than $0.71, but less than $1, shall be increased by 40 percent.

(c) Any Federal cost-share amounting to $1 or more shall be increased in accordance with the following schedule:

Amount of cost-share computed:	*Increase in cost-share*
$1 to $1.99	$0.40
$2 to $2.99	.80
$3 to $3.99	1.20
$4 to $4.99	1.60
$5 to $5.99	2.00
$6 to $6.99	2.40
$7 to $7.99	2.80
$8 to $8.99	3.20
$9 to $9.99	3.60
$10 to $10.99	4.00
$11 to $11.99	4.40
$12 to $12.99	4.80
$13 to $13.99	5.20
$14 to $14.99	5.60
$15 to $15.99	6.00
$16 to $16.99	6.40
$17 to $17.99	6.80
$18 to $18.99	7.20
$19 to $19.99	7.60
$20 to $20.99	8.00
$21 to $21.99	8.20
$22 to $22.99	8.40
$23 to $23.99	8.60
$24 to $24.99	8.80
$25 to $25.99	9.00
$26 to $26.99	9.20
$27 to $27.99	9.40
$28 to $28.99	9.60
$29 to $29.99	9.80
$30 to $30.99	10.00
$31 to $31.99	10.20
$32 to $32.99	10.40
$33 to $33.99	10.60
$34 to $34.99	10.80
$35 to $35.99	11.00
$36 to $36.99	11.20
$37 to $37.99	11.40
$38 to $38.99	11.60
$39 to $39.99	11.80
$40 to $40.99	12.00
$41 to $41.99	12.10
$42 to $42.99	12.20
$43 to $43.99	12.30
$44 to $44.99	12.40
$45 to $45.99	12.50
$46 to $46.99	12.60
$47 to $47.99	12.70
$48 to $48.99	12.80
$49 to $49.99	12.90
$50 to $50.99	13.00
$51 to $51.99	13.10
$52 to $52.99	13.20
$53 to $53.99	13.30
$54 to $54.99	13.40
$55 to $55.99	13.50
$56 to $56.99	13.60
$57 to $57.99	13.70
$58 to $58.99	13.80
$59 to $59.99	13.90
$60 to $185.99	14.00
$186 to $199.99	[1]
$200 and over	[2]

[1] Increase to $200.
[2] No increase.

§ 1105.719 *Maximum Federal cost-share limitation.* (a) The total of all Federal cost-shares under the 1958 program to any person with respect to farms, ranching units, and turpentine places in the United States (including Alaska, Hawaii, Puerto Rico, and the Virgin Islands) for approved practices which are not carried out under pooling agreements shall not exceed the sum of $2,500, and for all approved practices, including those carried out under pooling agreements, shall not exceed the sum of $10,000.

(b) All or any part of any Federal cost-share which otherwise would be due any person under the 1958 program may be withheld, or required to be refunded, if he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or any other means, designed to evade, or which has the effect of evading, the provisions of this section.

GENERAL PROVISIONS RELATING TO FEDERAL COST-SHARING

§ 1105.721 *Maintenance of practices.* The sharing of costs, by the Federal Government, for the performance of approved conservation practices on any farm or ranch under the 1958 program will be subject to the condition that the person with whom the costs are shared will maintain such practices throughout their normal life span in accordance with good farming practices as long as the land on which they are carried out is under his control.

§ 1105.722 *Practices defeating purposes of programs.* If the State Office finds that any person has adopted or participated in any practice which tends to defeat the purposes of the 1958 or any previous program, including, but not limited to, failure to maintain, in accordance with good farming practices, practices carried out under a previous program, it may withhold, or require to be refunded, all or any part of the Federal cost-share which otherwise would be due him under the 1958 program.

§ 1105.723 *Depriving others of Federal cost-share.* If the State Office finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation), the effect of which would be or has been to deprive any other person of the Federal cost-share due that person under the program, it may withhold, in whole or in part, from the person participating in or employing such a scheme or device, or require him to refund in whole or in part, the Federal cost-share which otherwise would be due him under the 1958 program.

§ 1105.724 *Filing of false claims.* If the State Office finds that any person has knowingly filed claim for payment of the Federal cost-share under the 1958 program for practices not carried out, or for practices carried out in such a manner that they do not meet the required specifications therefor, such person shall not be eligible for any Federal cost-share under the 1958 program and shall refund all amounts that may have been paid to him under the 1958 program. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

§ 1105.725 *Federal cost-shares not subject to claims.* Any Federal cost-share, or portion thereof, due any person shall be determined and allowed without regard to questions of title under State law; without deduction of claims for advances (except as provided in § 1105.726, and except for indebtedness to the United States subject to setoff under orders issued by the Secretary (Part 1109 of this chapter)); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

§ 1105.726 *Assignments.* Any person who may be entitled to any Federal cost-share under the 1958 program may assign his right thereto, in whole or in part, as security for cash loaned or advances made for the purpose of financing the making of a crop in 1958, including the carrying out of soil and water conservation practices. No assignment will be recognized unless it is made in writing on Form ACP-69 and in accordance with the regulations issued by the Secretary (Part 1110 of this chapter).

§ 1105.727 *Practices carried out with State or Federal aid.* The total extent of any practice performed shall be reduced for the purpose of computing cost-shares by the percentage of the total cost of the items of performance on which costs are shared which the State Office determines was furnished by a State or Federal agency. Materials or services furnished through the 1958 program, materials or services furnished by any agency of a State to another agency of the same State, or materials or services furnished or used by a State or Federal agency for the performance of practices on its land shall not be regarded as State or Federal aid for the purposes of this section.

§ 1105.728 *Compliance with regulatory measures.* Persons who carry out conservation practices for cost-sharing under the 1958 program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The person with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because he infringes on the rights of others or fails to comply with applicable laws and regulations.

APPLICATION FOR PAYMENT OF FEDERAL COST-SHARES

§ 1105.730 *Persons eligible to file application.* Any person who, as landlord, tenant, or sharecropper on a farm or ranch, bore a part of the cost of an approved conservation practice is eligible to file an application for payment of the Federal cost-share due him.

§ 1105.731 *Time and manner of filing application and required information.* (a) It shall be the responsibility of persons participating in the program to submit to the State Office forms and information needed to establish the extent of the performance of approved conservation practices and compliance with applicable program provisions. Time limits with regard to the submission of such forms and information shall be established where necessary for efficient administration of the program. Such time limits shall afford a full and fair opportunity to those eligible to file the forms or information within the period prescribed. At least 2 weeks' notice to the public shall be given of any general time limit prescribed. Such notice shall be given by mailing notice to each farm inspector and making copies available to the press. Other means of notification, including radio announcements and individual notices to persons affected, shall be used to the extent practicable. Notice of time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the persons affected. Exceptions to time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

(b) Payment of Federal cost-shares will be made only upon application submitted on the prescribed form to the State Office. Any application for payment may be rejected if any form or information required of the applicant is not submitted to the State Office within the applicable time limit.

(c) If an application for a farm or ranch is filed within the time prescribed, any producer on the farm or ranch who did not sign the application may subsequently apply for his share of the cost-share, provided he does so on or before December 31, 1959.

APPEALS

§ 1105.733 *Appeals.* (a) Any person may, within 15 days after notice thereof is forwarded to or made available to him, request the State Office in writing to reconsider its recommendation or determination in any matter affecting the right to or the amount of his Federal cost-shares with respect to the farm or ranch. The State Office shall notify him of its decision in writing within 15 days after receipt of written request for reconsideration. If the person is dissatisfied with the decision of the State Office, he may, within 15 days after the decision is forwarded to or made available to him, request the Administrator, ACPS, to review the decision of the State Office. The decision of the Administrator, ACPS, shall be final. Written notice of any decision rendered under this section by the State Office shall also be issued to each other landlord, tenant, or sharecropper on the farm or ranch who may be adversely affected by the decision.

(b) Appeals considered under this section shall be decided in accordance with the provisions of this subpart on the basis of the facts of the individual case: *Provided,* That the Secretary, upon the recommendation of the Administrator, ACPS, and the State Office, may waive the requirements of any such provision, where not prohibited by statute, if, in his judgment, such waiver under all the circumstances is justified to permit a proper disposition of an appeal where the farmer, in reasonable reliance on any instruction or commitment of any member, employee, or representative of the State Office, in good faith performed an eligible conservation practice and such performance reasonably accomplished the purpose of the practice.

AUTHORITY, AVAILABILITY OF FUNDS, AND APPLICABILITY

§ 1105.735 *Authority.* The program contained in this subpart is approved pursuant to the authority vested in the Secretary of Agriculture under sections 7-17 of the Soil Conservation and Domestic Allotment Act, as amended (49 Stat. 1148, 16 U. S. C. 590g-590q), and the Department of Agriculture and Farm Credit Administration Appropriation Act, 1958.

§ 1105.736 *Availability of funds.* (a) The provisions of the 1958 program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the paying of the Federal cost-shares provided in this subpart is contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such Federal cost-shares will necessarily be within the limits finally determined by such appropriation.

(b) The funds provided for the 1958 program will not be available for paying Federal cost-shares for which applications are filed in the State Office after December 31, 1959.

§ 1105.737 *Applicability.* (a) The provisions of the 1958 program contained in this subpart are not applicable to (1) any department or bureau of the United States Government or any corporation wholly owned by the United States; (2) grazing lands owned by the United States which were acquired or reserved for conservation purposes, or which are to be retained permanently under Government ownership, including, but not limited to, grazing lands administered by the Forest Service of the United States Department of Agriculture, or by the Bureau of Land Management (including lands administered under the Taylor Grazing Act) or the Fish and Wildlife Service of the United States Department of the Interior; (3) nonprivate persons for performance on any land owned by the United States or a corporation wholly owned by it; and (4) farmlands, the use of which the State Office determines will probably change within 2 years to nonagricultural use.

(b) The program is applicable to (1) privately owned lands; (2) lands owned by the Territory of Hawaii or a political subdivision or agency thereof; (3) lands owned by corporations which are partly owned by the United States, such as production credit associations; (4) lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the Federal Farm Mortgage Corporation, the United States Department of Defense, or by any other Government agency designated by the Administrator, ACPS; and (5) any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it.

CONSERVATION PRACTICES AND MAXIMUM RATES OF COST-SHARING

§ 1105.741 *Practice 1: Constructing terraces and/or diversion ditches to control the flow of runoff water and check soil erosion on sloping farmland.* Cost-sharing will be allowed, provided the structures are properly laid out and constructed in accordance with specifications contained in Soil Conservation Service Technical Standards on file in the State Office. If the land terraced is planted to clean-tilled crops, the crop rows should follow contour or suitable grade lines. Diversion ditches should be used on slopes between 16 percent and 20 percent and bench-type terraces on land of 20 percent or more slope. Necessary protective outlets must be provided.

Maximum Federal cost-share. (a) $0.30 per cubic yard of earth moved in terrain permitting normal operations of tillage equipment.

(b) $0.40 per cubic yard of earth moved in other terrain (rocky, broken, steep, or with exposed substratum).

§ 1105.742 *Practice 2: Constructing interception ditches and/or outlet channels for disposing of, diverting, or collecting water to control erosion or for impounding livestock water to obtain proper distribution of livestock and encourage rotation grazing and better grazing land management as a means of protecting established vegetative cover, and for irrigation.* This practice does not apply to infield surface water interception on farmlands. (See § 1105.741 (practice 1) for infield interception of runoff water.) Channels having an erosive grade must be protected against erosion damage by adequate sod or other lining. Outlets must be protected to discharge water without gullying. Cost-sharing will be allowed only once and that for the year of construction. Specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of $0.40 per cubic yard of material moved, other than by dynamiting.

(b) 50 percent of the cost of materials and labor in dynamiting rock.

§ 1105.743 *Practice 3: Establishing a protective sod lining in waterways to dispose of excess water without causing erosion.* This practice is to prevent erosion in permanent waterways and is applicable only to waterways built or reshaped in the program year for use in removing excess water from farmland that is contoured, terraced, and/or trash-mulched. Satisfactory sod lining (dense enough to prevent soil cutting) must be established before cost-sharing may be allowed for this practice. Maximum width of waterway for which cost-sharing will be approved is 50 feet. Detailed specifications on species, seeding rates, sprig spacings, soil preparation, and irrigation are contained in Soil Conservation Service Technical Standards on file in the State Office. Bermuda, Giant Bermuda, Kikuyu, or any other locally adapted species approved by the State Office may be used.

Maximum Federal cost-share. (a) $2 per 1,000 square feet of surface established by shaping and seeding, sodding, or sprigging.

(b) 50 percent of the average cost at the farm of the minimum required application of approved liming materials and commercial fertilizers, including nitrogen, for establishment of the cover. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.744 *Practice 4: Constructing erosion control dams or stone or vegetative barriers to prevent or heal the gullying of farmland or reduce runoff of water.* Receipts or invoices showing purchase of pipe and/or flume material and receipts or records showing payment for labor will be required by inspectors as evidence of accomplishment under (d) and (f) of this section. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 75 percent of the cost, but not in excess of $0.40 per cubic yard of earth moved in the construction of dams, wings, and walls.

(b) $20 per cubic yard of concrete used.

(c) $13 per cubic yard of rubble masonry used.

(d) 75 percent of the average cost of pipe and/or flume material delivered to the farm.

(e) $3 per cubic yard of rock used, for rock or rock-and-brush dams.

(f) 75 percent of the cost of constructing stone barriers for diverting and spreading surface runoff.

(g) $0.50 per 100 linear feet for planting single line vegetative barriers to impede the flow of surface runoff.

(h) $3 per 1,000 square feet for planting suitable permanent massed vegetative barriers.

§ 1105.745 *Practice 5: Initial planting of orchards on the contour to help prevent erosion.* This practice is to conserve water and reduce erosion from irrigation or storm water, with orchard rows running on nonerosive grades across the main slope. Cost-sharing will be allowed for planting orchards on the contour on land having more than 2 percent slope. The land must be protected during the rainfall season by cover crops, stubble mulch, or mulch and terraces or diversion ditches.

Maximum Federal cost-share. $7.50 per acre.

§ 1105.746 *Practice 6: Establishment of leguminous crops for use as stubble mulch, cover, or green manure for protection of soil from erosion.* In order to qualify, a good stand and a good growth of the leguminous crops must be grown and left on the land as cover or turned under for green manure during the program year. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing purchase of seed, or records of collecting, will be required by inspectors as evidence of seed used. In case of mixed seeding with acceptable nonlegumes (see § 1105.747 (practice 7)), the ratio of one-third of the required poundage of legume seed for unmixed plantings to two-thirds of the required poundage of nonlegume seed for unmixed plantings shall provide the basis for determining eligibility and cost-share. Any of the following crops or any other locally adapted crops approved by the State Office may be used.

	Minimum seeding rate (pounds per acre)
(a) Pigeon peas	30
(b) Velvetbeans	50
(c) Field beans	30
(d) Purple vetch	50
(e) Clover:	
Large like Kaimi	10
Small like Alsike	5
(f) Kudzu	8
(g) Crotalaria juncea	10
(h) Crotalaria spectabilis	10
(i) Cowpeas	30

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of $7.50 per acre of area planted.

(b) $7.50 per acre planted to sprigs or cuttings.

(c) 75 percent of the average cost of the minimum required application of fertilizer, but not in excess of $18 per acre of area fertilized. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.747 *Practice 7: Establishment of adapted nonlegumes for stubble mulch, cover, filter strip, or green manure for protection of soil from erosion.* Para grass (Panicum purpurascens), molasses grass, Rhodes grass, feather fingergrass, acceptable small grains, and other nonlegumes determined by the State Office as suitable for this purpose, are eligible for cost-sharing. In order to qualify, a good stand and a good growth must be secured during the program year and be left on the land if for cover or turned under before year-end if for green manure. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Acreage harvested for seed or hay is not eligible for Federal cost-sharing. Receipts or invoices showing purchase of seed, or records of collecting, will be required by inspectors as evidence of seed used. In case of mixed seeding with acceptable legumes, see § 1105.746 (practice 6) for ratio specifications.

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of $7.50 per acre actually planted.

(b) $7.50 per acre planted to sprigs, stools, or cuttings.

(c) 75 percent of the average cost of the minimum required application of fertilizer, but not in excess of $18 per acre of area fertilized. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.748 *Practice 8: Initial establishment of permanent pasture or initial improvement of an established permanent grass or grass-legume cover for soil or watershed protection by seeding, sodding, or sprigging adapted perennial grasses and/or legumes.* All equipment used to prepare land for seeding shall operate across the slope as near to the contour as practicable. In areas where long slopes are to be broken out of native vegetation, the land preparation shall be done in contour strips and established to improved pasture before the intermediate strips shall be broken out. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. The seed must be well distributed over the area sown to insure a good stand at maturity. Any locally adapted crops approved by the State Office may be used but must be seeded at not less than the minimum seeding rates per acre prescribed by the State Office. In order to meet minimum requirements, slips or stools of grasses may be planted in continuous rows. Grass and legume charts are available in the State Office. Costs will be shared only if a satisfactory stand of the seeded grass or legume-grass mixture is established within 6 months after clearing, unless natural circumstances recognized by the State Office as being beyond control of the farmer affect growth results adversely. No area seeded shall be grazed until grass and legume-grass mixtures are well established. This practice is not applicable to land occupied by a merchantable stand of timber or pulpwood, or to land which, if cleared, would be suitable for continued production of crops. Receipts or invoices showing purchase of seed, or records of collecting, will be required as evidence of cost. If liming materials must be applied in the quantity determined to be needed for successful establishment of the cover, cost-sharing for the minimum required application of liming materials may be authorized under § 1105.749 (practice 9).

Maximum Federal cost-share. (a) 75 percent of the cost of seed in straight grass or legume seedings, but not in excess of $10 per acre, for seeding after land preparation.

(b) 75 percent of the cost of seed in mixed grass-legume seedings, but not in excess of $12.50 per acre seeded.

(c) $7.50 per acre planted to slips or stools.

(d) 75 percent of the average cost at the farm of the minimum required application of approved commercial fertilizers, including nitrogen, for the establishment of the cover, but not in excess of $18 per acre. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.749 *Practice 9: Initial treatment of cropland, orchardland, or pasture for correction of soil acidity and addition of needed calcium to permit best use of legumes and/or grasses for soil improvement and protection.* This practice is applicable to land which is devoted in 1958 to grasses or legumes or which will be devoted to grasses or legumes in the planned rotation for the farm. Treatment of land which is in pasture and which is to remain in pasture will be eligible for cost-sharing only if recent soil analysis and Agricultural Extension Service recommendations justify the use of lime and all measures needed to assure an improved vegetative cover which will provide adequate and extended soil protection are carried out. Liming material must contain at least 80 percent calcium carbonate equivalent and be fine enough to pass through a 20-mesh screen (unless the Agricultural Extension Service of the University of Hawaii recommends otherwise) and must be evenly applied to the land. Except as provided in § 1105.714, cost-sharing may not be authorized for this practice on land on which this practice or another practice involving the application of liming material was carried out in 1954 or a subsequent year, unless a current soil test shows a need for a substantial application of liming material. Receipts or invoices showing the purchase of lime, properly dated and signed by the vendor, will be required as evidence by the farm inspector at the time of inspection.

Maximum Federal cost-share. (a) 50 percent of the cost of liming material delivered to the farm on an island having locally produced lime available.

(b) 75 percent of the cost of liming material delivered to the farm on an island without locally produced lime available.

§ 1105.750 *Practice 10: Initial controlling of competitive shrubs to permit growth of adequate grass cover for soil protection on range or pasture land by poisoning, gyro-mowing, or hand grubbing.* Costs will be shared for each treatment, but not in excess of three treatments during the year, made according to accepted practices. Receipts or invoices showing purchase of poisons used or grubbing labor employed will be required by inspectors as evidence of cost. Analysis of poisons will also be required. Competitive shrubs eligible under this practice are as listed below and described in Extension Bulletin 62, University of Hawaii, available at the State Office.

Guava (Psidium guajava).
Opiuma (Pithecellobium dulce).
Emex (Emex spinosa).
Melastoma (Melastoma malabathricum).
Firebush (Myrica faya).
Pepper tree (Schinus molle).
Cactus (Opuntia megaxantha).
Java plum (Eugenia cumini).
Christmas berry (Schinus terebinthifolius).
Cat's claw (Caesalpinia sepiaria).
Aalii (Dodonaea eriocarpa).
Joee (Stachytarpheta cayennensis).
Lantana (Lantana camara).
Waiawi (Psidium cattleianum var. lucidum).
Pamakani (Eupatorium adenophorum).
Puakeawe (Styphelia tameiameiae).
Sacramento bur (Triumfetta semitriloba).
Staghorn fern (Gleichenia linearis).
Apple of Sodom (Solanum sodomeum).
Black wattle (Acacia decurrens).
Gorse (Ulex europaeus).
Blackberry (Rubus penetrans).

Maximum Federal cost-share. (a) 50 percent of the average cost of State Office approved chemicals, but not in excess of $2 per acre per application.

(b) 50 percent of the cost of grubbing labor, but not in excess of $3 per acre per treatment.

(c) 50 percent of the cost of gyro-mowing, but not in excess of $2 per acre for each mowing.

§ 1105.751 *Practice 11: Initial application of organic mulch material to any cropland, orchardland, or eroded pasture areas for soil protection and moisture conservation.* Organic material must be of a fibrous nature and shredded, chopped, or crushed. Material such as sugarcane bagasse, cane leaf trash, pineapple trash, tree fern stumps, coarse grasses, coffee husks, sawdust, and wood shavings or chips, as well as macadamia nut husks and shells, will be eligible. At time of application, finely shredded material like bagasse and sawdust should lie at least 2 inches thick, medium fine material like coffee husks and wood shavings should lie at least 3 inches thick, and coarse material like pineapple trash and cane leaf trash should lie at least 6 inches thick. Receipts or invoices showing purchase of materials and cost of transportation will be required by inspectors as evidence of compliance. For protection of mulch cover from damage by flowing water, terraces and/or diversion ditches must be installed where necessary and feasible.

Maximum Federal cost-share. (a) 50 percent of the cost of organic material at the farm, but not in excess of $50 per acre treated with materials secured from outside the farm.

(b) $2.50 per acre treated with material produced on the farm.

(c) 50 percent of the cost of acceptable organic material grown for the purpose on the farm, but not in excess of $50 per acre.

§ 1105.752 *Practice 12: Installation of pipelines for livestock water to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover.* Installations in corrals, feed lots, and holding pens are not eligible. Receipts or invoices showing purchase of pipe used will be required to determine cost.

Maximum Federal cost-share. 35 percent of the average cost of pipe at the farm, except that the cost-share for pipe in excess of 2 inches in diameter may not exceed the cost which may be shared for 2-inch pipe.

§ 1105.753 *Practice 13: Construction of permanent artificial watersheds for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover.* No cost will be shared if the water supplied is primarily for irrigation or domestic purposes. Construction for purposes of starting new grazing operations is not eligible. The practice is not applicable for corrals, feed lots, and holding pens alone. Receipts or invoices showing purchase of materials used will be required to determine cost. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 35 percent of the cost of material used, other than concrete and rubble masonry.

(b) $12 per cubic yard of concrete used.

(c) $7 per cubic yard of rubble masonry used.

§ 1105.754 *Practice 14: Construction of permanent artificial water tanks for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover.* No cost will be shared if the water supplied is primarily for irrigation or domestic purposes. Construction for purposes of starting new grazing operations is not eligible. The practice is not applicable for corrals, feed lots, and holding pens alone. Receipts or invoices showing purchase of materials used will be required to determine cost.

Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 35 percent of the cost of material used, other than concrete and rubble masonry.

(b) $12 per cubic yard of concrete used.

(c) $7 per cubic yard of rubble masonry used.

§ 1105.755 *Practice 15: Construction of permanent fences to obtain better distribution and control of livestock grazing on range or pasture land and to promote proper management for protection of established forage resources, or to protect farm woodland from grazing.* No cost may be shared for the maintenance or repair of existing fences or for the construction of boundary fences including road fences. Required fencing of forest reserve land is not eligible. Any fencing necessary to the working of cattle (including pens, corrals, and feed lots) is ineligible. Receipts or invoices showing purchase of materials will be required to determine cost.

Maximum Federal cost-share. (a) 35 percent of the average cost at the farm of posts, wire, poles, lumber, staples, or other similar fencing materials used.

(b) $0.25 per linear foot of rock wall, minimum dimensions of which shall be: Height, 4 feet; base width, 36 inches; top width, 24 inches.

§ 1105.756 *Practice 16: Constructing or sealing dams, pits, or ponds for livestock water, including the enlargement of inadequate structures.* The development must contribute to a better distribution of grazing or better pasture management. This practice is applicable only to livestock enterprises on lands established for grazing. Receipts or invoices showing purchase of material used in construction will be required by inspectors as evidence of cost. Earth fills must be constructed in accordance with supplemental specifications for "Small Earth Storage Dams," provided on request by SCS or ASC offices.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of $0.40 per cubic yard of earth material moved.

(b) $14 per cubic yard of concrete used.

(c) $8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the cost of fencing materials, pipe, and seeding or sodding the dam and filter strips.

(e) 50 percent of the cost at site of materials, other than concrete and rubble masonry, and including soil sealing.

§ 1105.757 *Practice 17: Constructing or sealing dams, pits, or ponds for irrigation water.* The purpose of this practice is to conserve agricultural water or to provide water necessary for the conservation of soil resources. No cost-sharing will be allowed for material moved in cleaning or maintaining a reservoir, or for dams, pits, or ponds, the primary purpose of which is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Receipts or invoices showing purchase of materials used will be required by inspectors as evidence of cost. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of $0.40 per cubic yard of earth material moved.

(b) $14 per cubic yard of concrete used.

(c) $8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the cost of pipe and outlet gates.

(e) 50 percent of the cost of seeding or sodding dams or filter strips.

(f) 50 percent of the cost of materials, other than concrete and rubble masonry, used in permanent structures, including soil sealing.

§ 1105.758 *Practice 18: Constructing or enlarging permanent ditches, dikes, or laterals in reorganization of farm irrigation system to conserve water and prevent erosion.* The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing records of employment of equipment and/or labor will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for cleaning a ditch. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the cost, but not in excess of $0.40 per cubic yard of earth material moved in the construction or enlargement of permanent ditches, dikes, or laterals.

§ 1105.759 *Practice 19: Lining ditches in reorganization of farm irrigation system to conserve water and prevent erosion.* The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of materials used will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the average cost of approved material used, other than concrete and rubble masonry.

(b) $14 per cubic yard of concrete used.

(c) $8.50 per cubic yard of rubble masonry used.

§ 1105.760 *Practice 20: Constructing or installing permanent structures such as siphons, flumes, drop boxes or chutes, weirs, diversion gates, and permanently located pipe in reorganization of farm irrigation system to conserve water and prevent erosion.* The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of material used will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the average cost of material used in permanent structures, other than concrete and rubble masonry, but excluding forms.

(b) $14 per cubic yard of concrete used.

(c) $8.50 per cubic yard of rubble masonry used.

§ 1105.761 *Practice 21: Installation of portable sprinklers or gated pipes in reorganizing farm irrigation system to conserve water and prevent erosion.* The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of materials or equipment will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the average cost of portable pipe and fittings or gated pipe used for reorganized irrigation. The total cost-share for portable pipe or gated pipe shall not exceed $100 per acre of reorganized irrigation.

§ 1105.762 *Practice 22: Construction or enlargement of permanent open drainage systems to dispose of excess water on farmland under cultivation or on pastureland.* No cost will be shared for material moved in cleaning or maintaining a ditch, or for structures installed for crossings, or for other structures primarily for the convenience of the farm operator. Receipts or invoices showing purchase of seed or materials and records of labor employed and soil moved will be required by inspectors as evidence of construction work costs. No cost-sharing will be allowed for ditches, the primary purpose of which is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of $0.40 per cubic yard of material moved, other than by dynamiting.

(b) $14 per cubic yard of concrete used.

(c) $8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the average cost of seed or planting materials for establishing suitable cover for protection against erosion on ditch banks and rights-of-way, plus 50 percent of the average cost at the farm of the minimum required application of approved liming materials and commercial fertilizers, including nitrogen, for the establishment of the cover.

(e) 50 percent of the cost of materials and labor in dynamiting rock.

(f) 50 percent of the average cost of material used, other than concrete and rubble masonry.

§ 1105.763 *Practice 23: Initial establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion.* Plantings must be protected from fire and grazing. Fencing newly planted trees or shrubs under this practice for protection against grazing is eligible for cost-sharing only if the construction specifications in § 1105.755 (practice 15) are employed. Acceptable plant species and spacing are those recommended by the Forestry Division of the Territorial Board of Agriculture and Forestry.

Maximum Federal cost-share. $8 per 100 trees or shrubs planted.

§ 1105.764 *Practice 24: Initial establishment of a stand of trees or shrubs to prevent wind or water erosion.* Plantings must be protected from fire and grazing. Fencing newly planted trees or shrubs under this practice for protection against grazing is eligible for cost-sharing only if the construction specifications in § 1105.755 (practice 15) are employed. Acceptable plant species are those recommended by the Forestry Division of the Territorial Board of Agriculture and Forestry. The spacing of trees and shrubs shall be in accordance with specifications developed by the Soil Conservation Service.

Maximum Federal cost-share. $8 per 100 trees or shrubs planted.

§ 1105.765 *Practice 25: Installation of facilities for sprinkler irrigation of permanent pasture for developing forage resources to encourage rotation grazing and better pasture management for protection of all grazing land in the farm against overgrazing and erosion.* Installation of sprinkler irrigation facilities must be solely for irrigation of permanent pasture or area being established in permanent pasture. The installation must be in accordance with a written plan approved by the responsible technician.

Maximum Federal cost-share. 50 percent of the cost at the farm of all necessary pipe and fittings, but not in excess of $100 per acre irrigated by the installation. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.766 *Practice 26: Constructing wells or developing seeps or springs for livestock water as a means of protecting established vegetative cover through proper distribution of livestock, rotation grazing, or better grassland management.* Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing payment for labor and/or purchase of materials used will be required by inspectors. Pumping equipment must be installed for wells, except artesian wells, and adequate storage facilities must be provided. Cost-sharing will be allowed only for constructing or deepening wells and for water storage facilities. No cost-sharing will be allowed for wells constructed primarily for the use of headquarters.

Maximum Federal cost-share. 50 percent of the cost of construction or development, excluding pumping equipment.

§ 1105.767 *Practice 27: Shaping or land grading to permit effective surface drainage.* No Federal cost-sharing will be allowed for shaping or grading performed through farming operations connected with land preparation for planting or cultivating crops. No Federal cost-sharing will be allowed for shaping or land grading on land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the cost of shaping or grading. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.768 *Practice 28: Leveling or grading land for more efficient use of irrigation water and to prevent erosion.* No Federal cost-sharing will be allowed for floating or restoration of grade. However, the leveling operation may be completed over a period of more than one program year on a component basis where the size and cuts of fills are such that a heavy leveling operation will be needed following settlement of the original fills. No Federal cost-sharing will be allowed for leveling land if the primary purpose of the leveling is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Leveling or grading must be carried out in accordance with a plan approved by the responsible SCS technician. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing payment of labor and equipment will be required by inspectors.

Maximum Federal cost-share. 50 percent of the cost of earth moving.

§ 1105.769 *Practice 29: Streambank or shore protection, channel clearance, enlargement or realinement, or construction of floodways, levees, or dikes, to prevent erosion or flood damage to farmland.* This practice shall not be approved in cases where there is any likelihood that it will create an erosion or flood hazard to other adjacent land, or where its primary purpose is to bring new land into agricultural production. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 75 percent of the cost of construction and protective measures. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.770 *Practice 30: Initial establishment of contour operations on nonterraced unirrigated land to protect soil from wind or water erosion.* All cultural operations must be performed as nearly as practicable on the contour. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. $5 per acre established in contour farming during the year.

§ 1105.771 *Practice 31: Initial establishment of cross-slope stripcropping to protect soil from water or wind erosion.* All cultural operations, including row crop planting, must be performed across the prevailing slope.

Maximum Federal cost-share. $5 per acre established in cross-slope stripcropping during the year.

§ 1105.722 *Practice 32: Establishment of permanent vegetative strips between tree rows in young (less than 5 years old) coffee orchards as a protection against erosion.* Federal cost-sharing will be limited to the establishment of vegetative strips not less than 3 feet wide across the slope.

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of $7.50 per acre of area planted to grasses and legumes listed in §§ 1105.756 and 1105.757 (practices 6 and 7). (Receipts, invoices, or other evidence of cost are required.)

(b) $7.50 per acre planted to sprigs or cuttings.

(c) 50 percent of the average cost at the farm of the minimum required application of approved commercial fertilizer, including nitrogen, and liming material for the establishment of the vegetative strips, but not in excess of $7 per acre of area treated. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.773 *Practice 33: Subsurface tillage of cropland and/or orchardland protected by organic mulch, to avoid plowing under the surface cover of mulch which has been applied for soil protection and moisture conservation.* No cost-sharing will be allowed unless the soil surface is protected by a blanket of settled mulch not less than 1 inch thick.

Maximum Federal cost-share. $5 per acre subtilled, but not in excess of two subtilling operations a year. The total cost-share shall not be in excess of $300 per farm.

§ 1105.774 *Practice 34: Constructing channel lining, chutes, drop spillways, pipe drops, drop inlets, or similar structures for the protection of outlets and* *water channels that dispose of excess water.* Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing purchase of materials will be required by inspectors as evidence of material used. Federal cost-sharing will not be allowed for forms or repair of existing structures.

Maximum Federal cost-share. 75 percent of the cost of material used.

Done at Washington, D. C., this 21st day of October 1957.

[SEAL] E. L. PETERSON,
Assistant Secretary.

[F. R. Doc. 57-8751; Filed, Oct. 23, 1957; 8:47 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 231—INTERPRETATIVE RELEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

STATEMENT OF COMMISSION RELATING TO PUBLICATION OF INFORMATION PRIOR TO OR AFTER EFFECTIVE DATE OF REGISTRATION

§ 231.3844 *Statement of the Commission relating to publication of information prior to or after the effective date of a registration statement.*

Questions frequently are presented to the Securities and Exchange Commission and its staff with respect to the impact of the registration and prospectus requirements of section 5 of the Securities Act of 1933 on publication of information concerning an issuer and its affairs by the issuer, its management, underwriters and dealers. Some of the more common problems which have arisen in this connection and the nature of the advice given by the Commission and its staff are outlined herein for the guidance of industry, underwriters, dealers and counsel.

A basic purpose of the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 is to require the dissemination of adequate and accurate information concerning issuers and their securities in connection with the offer and sale of securities to the public, and the publication periodically of material business and financial facts, knowledge of which is essential to an informed trading market in such securities.

There has been an increasing tendency, particularly in the period since World War II, to give publicity through many media concerning corporate affairs which goes beyond the statutory requirements. This practice reflects a commendable and growing recognition on the part of industry and the investment community of the importance of informing security holders and the public generally with respect to important business and financial developments.

This trend should be encouraged. It is necessary, however, that corporate management, counsel, underwriters, dealers and public relations firms recognize that the Securities Acts impose certain responsibilities and limitations upon persons engaged in the sale of securities and that publicity and public relations activities under certain circumstances may involve violations of the securities laws and cause serious embarrassment to issuers and underwriters in connection with the timing and marketing of an issue of securities. These violations not only pose enforcement and administrative problems for the Commission, they may also give rise to civil liabilities by the seller of securities to the purchaser.

Absent some exemption, section 5 (c) of the Securities Act of 1933 makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security.

Section 5 (a) of the act makes it unlawful to sell a security unless a registration statement with respect to such security has become effective. Section 5 (b) makes it unlawful to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to transmit a prospectus with respect to any security as to which a registration statement has been filed unless such prospectus contains the information specified by section 10 of the act.

A prospectus is defined to include any notice, circular, advertisement, letter or communication, written or by radio or television, which offers any security for sale except that any communication sent after the effective date of a registration statement shall not be deemed a prospectus if, prior to or at the same time with such a communication, a written prospectus meeting the requirements of section 10 of the act was sent or given.

Stated otherwise, it is illegal to offer a security prior to the filing of a registration statement.[1] A security may be offered legally after filing and before the effective date of a registration statement, provided that any prospectus employed for this purpose meets the standards of section 10 of the act.[2] Thus, in general during this period (after the filing and before the effective date), no written communication offering a security may be transmitted through the mails or in interstate commerce other than a prospectus authorized or permitted by the statute or relevant rules thereunder.[3] After the effective date, sales literature in addition to the prospectus may be employed legally, provided the section 10 (a) prospectus precedes or accompanies the supplemental literature.[4]

[1] By virtue of internal procedural standards, or agreements with stock exchanges on which securities are listed, managements wish, or are required, to advise security holders promptly of important decisions which may affect materially their interests as security holders. In recognition of the propriety of such action, Rule 230.135 permits a brief announcement, which does not "offer a security," of a forthcoming rights offering.

[2] Rule 230.433 permits the use of a "preliminary" prospectus which contains substantially all of the information in the registration statement which at this stage does not usually include the offering price, related and underwriting data. Rule 230.134 also permits a form of brief advertisement or written communication advising of the pendency of the offering and indicating where the preliminary prospectus may be obtained.

[3] Rule 230.434 provides in certain cases for the use of cards prepared by independent statistical organizations which fairly summarize the information contained in the prospectus filed with the Commission. Rule 230.434A permits the use in many cases of a similar summary prospectus prepared by or on behalf of the issuer.

[4] Rule 230.494 provides for the use, in addition, of the so-called "newspaper prospectus" in an offering by certain issuers.

These provisions with respect to the time and manner of offering and selling securities apply during the period of distribution of the security, i. e., the statutory prospectus must be employed by an underwriter or a dealer participating in the distribution so long as he is offering an unsold allotment. All underwriters and dealers must use the prospectus during the 40-day period following the effective date of a registration statement or the commencement of the public offering, whichever later occurs.

The terms "sale," "sell," "offer to sell" and "offer for sale" are broadly defined in section 2 (3) of the act and these definitions have been liberally construed by the Commission and the courts.

It follows from the express language and the legislative history of the Securities Act that an issuer, underwriter or dealer may not legally begin a public offering or initiate a public sales campaign prior to the filing of a registration statement. It apparently is not generally understood, however, that the publication of information and statements, and publicity efforts, generally, made in advance of a proposed financing, although not couched in terms of an express offer, may in fact contribute to conditioning the public mind or arousing public interest in the issuer or in the securities of an issuer in a manner which raises a serious question whether the publicity is not in fact part of the selling effort.

Nor is it generally understood that the release of publicity and the publication of information between the filing date and the effective date of a registration statement may similarly raise a question whether the publicity is not in fact a selling effort by an illegal means; i. e., other than by means of the statutory prospectus. Similar problems will arise from publicity and the release of information after the effective date, but before a distribution is completed.

Apart from the impropriety of such publicity under the Securities Act, a collateral problem is presented by reason of the fact that the dissemination of information, other than that contained in a prospectus, prior to or during a distribution may tend to affect the market price of the issuer's securities artificially.

Instances have come to the attention of the Commission in which information of a misleading character, gross exaggeration and outright falsehood have been published by various means for the purpose of conveying to the public a message designed to stimulate an appetite for securities—a message which could not properly have been included in a statutory prospectus in conformity with the standards of integrity demanded by the statute.

Many of the cases have reflected a deliberate disregard of the provisions and purpose of the law. Others have reflected an unawareness of the problems involved or a failure to exercise a proper control over research and public relations activities in relation to the distribution of an issue of securities.

Example 1. An underwriter-promoter is engaged in arranging for the public financing of a mining venture to explore for a mineral which has certain possible potentialities for use in atomic research and power. While preparing a registration statement for a public offering, the underwriter-promoter distributed several thousand copies of a brochure which described in glowing generalities the future possibilities for use of the mineral and the profit potential to investors who would share in the growth prospects of a new industry. The brochure made no reference to any issuer or any security nor to any particular financing. It was sent out, however, bearing the name of the underwriting firm and obviously was designed to awaken an interest which later would be focused on the specific financing to be presented in the prospectus shortly to be sent to the same mailing list.

The distribution of the brochure under these circumstances clearly was the first step in a sales campaign to effect a public sale of the securities and as such, in the view of the Commission, violated section 5 of the Securities Act.

Example 2. An issuer in the promotional stage intended to offer for public sale an issue of securities the proceeds of which were to be employed to explore for and develop a mineralized area. The promoters and prospective underwriter prior to the filing of the required registration statement or notification under Regulation A arranged for a series of press releases describing the activities of the company, its proposed program of development of its properties, estimates of ore reserves and plans for a processing plant. This publicity campaign continued after the filing of a registration statement and during the period of the offering. The press releases, which could be easily reproduced and employed by dealers and salesmen engaged in the sales effort, contained representations, forecasts and quotations which could not have been supported as reliable data for inclusion in a prospectus or offering circular under the sanctions of the act.

It is the Commission's view that issuing information of this character to the public by an issuer or underwriter through the device of the press release and the press interview is an evasion of the requirements of the act governing selling procedures, a violation of sections 5 and 17 (a) of the act, and that such activity subjects the seller to the risk of civil and penal sanctions and liabilities of the act.

Example 3. An issuer filed a registration statement for an issue of securities to be offered through underwriters. Following the effective date of the registration statement, efforts to market the issue were not wholly successful and a substantial amount of the securities remained in the hands of the underwriters and dealers. At this point the issuer published an advertisement which received wide newspaper and magazine circulation and which included data purporting to show reserves of raw materials in terms of estimated future dollar realization per share. The advertisement took the conventional form of a product advertisement except for the inclusion of calculations of per-share asset values.

The Commission brought an action to enjoin further publication of the advertisement on the theory that its content and use, at a time when the existence of unsold allotments in the hands of underwriters and dealers indicated clearly that the distribution of the registered securities had not been completed, involved a violation of sections 5 and 17 (a) of the Securities Act.

Example 4. An issuer negotiating with a prospective underwriter for a public offering of common stock supplied the underwriter with financial information concerning the issuer's operations for the first quarter of the fiscal year. The prospective underwriter incorporated this material in a brochure containing other information concerning the issuer and its prospects and distributed the brochure widely among the membership of the N. A. S. D. at a time when a registration statement was being prepared but prior to its filing. When the registration statement was filed it was discovered that the financial statements included therein reflected a history of operations and a current position much less favorable than suggested by the first quarter figures shown in the brochure.

In the view of the Commission the distribution of the brochure violated section 5 of the act and in addition raised questions as to violation of section 17 (a) of the act. The Commission also considered that these activities of the underwriter justified denial of acceleration of the effective date of the registration statement pending a circulation of the prospectus co-extensive with the distribution of the brochure.

Example 5. Immediately preceding the filing of a registration statement for an issue of securities by a large industrial company, the research department of an investment banking firm distributed to a substantial number of the firm's institutional customers a brochure which referred specifically to the securities and described the business and prospects of the parent company of the prospective issuer. The business of the prospective issuer represented the principal part of the over-all operations of the total enterprise. The investment banking firm had been a principal underwriter of prior issues of securities by the parent and in accordance with policy of the firm from time to time distributed reports to its clients concerning securities of issuers which the firm had financed. It appeared, in this particular case, that the research department of the banking firm had prepared and distributed such a report to its clients without being fully aware of the activities of the underwriting department or the timing of the forthcoming offering.

The Commission advised the representatives of the issuer and the prospective underwriters that under all the circumstances, including the content, timing and distribution given to the brochure, participation of the firm in the distribution of the securities would pose difficulties from the point of view of the enforcement of the provisions of section 5 of the Securities Act. In order to avoid any question as to violations of this provision of the act, the banking firm did not participate in the distribution.

Example 6. In recognition of the problems presented, the Commission's staff frequently receives inquiries from company officials or their counsel with respect to circumstances such as the following:

The president of a company accepted, in August, an invitation to address a meeting of a security analysts' society to be held in February of the following year for the purpose of informing the membership concerning the company, its plans, its record and problems. By January a speech had been prepared together with supplemental information and data, all of which was designed to give a fairly comprehensive picture of the company, the industry in which it operates and various factors affecting its future growth. Projections of demand, operations and profits for future periods were included. The speech and the other data had been printed and it was intended that several hundred copies would be available for distribution at the meeting. In addition, since it was believed that stockholders, creditors, and perhaps customers might be interested in the talk, it was intended to mail to such persons and to a list of other selected firms and institutions copies of the material to be used at the analysts' meeting.

Later in January, a public financing by the company was authorized, preparation of a registration statement was begun and negotiation with underwriters was commenced. It soon appeared that the coming meeting of analysts, scheduled many months earlier, would be at or about the time the registration statement was to be filed. This presented the question whether, in the circumstances, delivery and distribution of the speech and the supporting data to the various persons mentioned above would contravene provisions of the Securities Act.

It seemed clear that the scheduling of the speech had not been arranged in contemplation of a public offering by the issuer at or about the time of its delivery. In the circumstances, no objection was raised to the delivery of the speech at the analysts' meeting. However, since printed copies of the speech might be received by a wider audience, it was suggested that printed copies of the speech and the supporting data not be made available at the meeting nor be transmitted to other persons.

Example 7. Two weeks prior to the filing of a registration statement the president of the issuer had delivered, before a society of security analysts, a prepared address which had been booked several months previously. In his speech the president discussed the company's operations and expansion program, its sales and earnings. The speech contained a forecast of sales and referred to the issuer's proposal to file with the Commission later in the month a registration statement with respect to a proposed offering of convertible subordinated debentures. Copies of the speech had been distributed to approximately 4,000 security analysts.

The Commission denied acceleration of the registration statement and requested that the registrant distribute copies of its final prospectus to each member of the group which had received a copy of the speech.

Example 8. A registration statement had become effective for the purpose of competitive bidding. Prior to the opening of the bids, it was learned that an investment banking member of one of the bidding groups had published a brochure discussing the prospects of the company and forecasting a rise in the market price of its stock. It appeared that neither the company nor other members of the bidding group had received advance information as to the publication of the brochure. In the circumstances, counsel for the proposed underwriters' group was advised that publication and distribution of the brochure must be deemed to contravene the provisions of Section 5 of the Securities Act if the firm publishing it was a member of the underwriting or selling group. This group was the successful bidder. However, the firm publishing the brochure was not included either as an underwriter or as a member of the selling group.

Example 9. An issuer was about to file a registration statement for a proposed offering on behalf of a controlling person. The timing of the issue was fixed in accommodation to the controlling person. It appeared, however, that registration would coincide with the time when the company normally distributed its annual report to security holders and others. In recognition of the problem posed, inquiry was made whether such publication and distribution of the report at such time would create any problems. The issuer was advised that, if the annual report was of the character and content normally published by the company and did not contain material designed to assist in the proposed offering, no question would be raised.

Example 10. A report concerning a registrant had been prepared by an engineering firm for use by prospective underwriters. The report contained a 5-year projection of earnings. It appeared that, in addition to the distribution of the report among prospective underwriters, copies of the report had been made available, after the filing of a registration statement but before it became effective, to broker-dealers, to salesmen who would be engaged in the offering and sale of the securities and to certain investors. One broker-dealer firm had made available to salesmen excerpts from the report. The Commission advised the persons responsible for the distribution of the report that in its view distribution of the report to persons other than to persons bona fide concerned with the question of considering and under-taking an underwriting commitment, contravened the provisions of section 5.

This release becomes effective October 4, 1957.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

OCTOBER 4, 1957.

[F. R. Doc. 57-8748; Filed, Oct. 23, 1957; 8:47 a. m.]

PART 231—INTERPRETATIVE RELEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

STATEMENT OF COMMISSION CONCERNING INTERPRETATION AND APPLICATION OF RULE 133

§ 231.3846 *Statement of the Commission concerning the interpretation and application of § 230.133 (Rule 133).*

Rule 133. Rule 133 under the Securities Act of 1933 provides that, for the purpose of determining the application of the registration and prospectus provisions of section 5 of the act, no "offer" or "sale" shall be deemed to be involved, so far as stockholders of a corporation are concerned, where, pursuant to statutory provisions or provisions contained in a certificate of incorporation, there is submitted to the vote of such stockholders a plan involving a statutory merger, consolidation, reclassification of securities or transfer of assets of the corporation in consideration of the issuance of the securities of the acquiring corporation.

On October 2, 1956, in Release No. 3698 under the Securities Act, the Commission invited comment upon a proposal, the effect of which would have been to repeal Rule 133 and to provide that transactions of the character referred to in the rule involve an "offer" and "sale" of a security subject to the registration and prospectus provisions of the act. The Commission received numerous comments and a public hearing was held on January 17, 1957. On March 15, 1957, in Securities Act Release No. 3761, the Commission announced deferral of action upon the proposal pending further study of the problems and questions which had been raised and that any future modification of Rule 133 would be undertaken only after ample opportunity for further public comment thereon.

The staff of the Commission is continuing its study of the proposal and related matters.

A number of inquiries have been presented to the Commission and staff concerning the application of Rule 133. To assist issuers, their counsel and others, the Commission has determined to publish an opinion recently expressed concerning the interpretation and application of Rule 133.

A merger of two companies had been authorized by the Boards of Directors of the respective corporations, over the objections of one director of the company to be merged who represented the largest single stockholder, a trust holding a substantial block of stock of that company. It was understood that upon receipt of shares in consummation of the merger, this trust might effect a distribution of such shares. In response to a request for a ruling as to the applicability of Rule 133 to the proposed merger, the Commission authorized that counsel be advised that:

"* * * no question will be raised by the Commission with respect to the applicability of Rule 133 concerning the issuance of the shares of [the surviving company] to the security holders of [the company to be merged] in consummation of the merger. I am also authorized to advise you, however, that in the opinion of the Commission, Rule 133 would provide no exemption from the registration and prospectus provisions of section 5 of the act with respect to any subsequent public distribution of the shares received by any security holder of [the company to be merged] who might be deemed a statutory underwriter. Under the circumstances of this case it would appear that the trust referred to above would be a statutory underwriter if it acquires shares of [the surviving company] in the merger with a view to a distribution of such shares. In this event, there would be no exemption under the first clause of section 4 (1) either for the issuer or an underwriter participating in a public offering.

"Rule 133 merely provides that a transaction authorized by a vote of shareholders does not for the purpose of section 5 involve an offer or sale to them so as to require prior registration of the securities and the presentation of a prospectus to such security holders in connection with the submission of the plan of merger and the receipt of shares in consummation. The definition of 'offer' and 'sale' contained in Rule 133 is, as appears on the face of the rule, so limited.

"The Commission stated in the Great Sweet Grass case (Securities Exchange Act Release No. 5483, April 8, 1957) at pages 10 and 11 of the mimeograph copy of its Findings and Opinion (a copy of which is enclosed) that:

'The theory of Rule 133 is that no sale to stockholders is involved where the vote of stockholders as a group authorizes a corporate act such as a transfer of assets for stock of another corporation, a merger or a consolidation because there is not present the element of individual consent ordinarily required for a 'sale' in the contractual sense. However, this does not mean that the stock issued under such a plan is 'free' stock which need not be registered insofar as subsequent sales are concerned. Unless the Securities Act provides an exemption for a subsequent sale of such non-registered stock, registration would be required. Of course, subsequent casual sales of such stock by non-controlling stockholders which follow the normal pattern of trading in the stock would be deemed exempt from the provisions of section 5 of that act as transactions not involving an issuer, underwriter or dealer under the first clause of section 4 (1) of the Securities Act. However, if the issuer or persons acting on its behalf participate in arrangements for a distribution to the public of any of the stock issued to stockholders or have knowledge of a plan of distribution by, or concerted action on the part of, such stockholders to effect a public distribution in connection with the transaction, a section 4 (1) exemption would not be available since an underwriting within the meaning of the statute would be involved.' "

Following receipt of the foregoing advice, a registration statement was filed on Form S-1 to cover the shares issuable in consummation of the merger. The prospectus included in the registration statement consisted essentially of the information contained in the definitive proxy statement of the surviving company which had been prepared previously in accordance with the Commission's proxy rules (Regulation X-14 under the Securities Exchange Act of 1934) and which had been forwarded to security holders of the surviving company in connection with the solicitation of proxies to be voted upon the plan of merger. Upon request of the issuer, the Commission, acting under section 8 (a) of the act, declared the registration statement effective.

This release becomes effective October 8, 1957.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

OCTOBER 8, 1957.

[F. R. Doc. 57-8749; Filed, Oct. 23, 1957; 8:47 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter B—Food and Food Products

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

TOLERANCES FOR RESIDUES OF 2,4-DICHLORO-6-(O-CHLOROANILINO)-TRIAZINE

A petition was filed with the Food and Drug Administration requesting the establishment of tolerances for residues of 2,4-dichloro-6-*O*-chloroanilino)-triazine in or on celery, tomatoes, and potatoes. Subsequently, the request with respect to a tolerance for residues of this pesticide chemical on celery was withdrawn without prejudice to a future filing.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (2), 68 Stat. 512; 21 U. S. C. 346a (d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.7 (g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120) are amended by adding thereto the following new section:

§ 120.158 *Tolerances for residues of 2,4-dichloro-6-(O-chloroanilino)-triazine.* Tolerances for residues of 2,4-dichloro-6-(*O*-chloroanilino)-triazine in or on raw agricultural products are established as follows:

(a) 10 parts per million in or on tomatoes.

(b) 1 part per million in or on potatoes.

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the effective date thereof, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by this order, specify with particularity the provisions of the order deemed objectionable and reasonable grounds for the objections, and request a public hearing upon the objections. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 408, 68 Stat. 511; 21 U. S. C. 346a)

Dated: October 17, 1957.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 57-8754; Filed, Oct. 23, 1957; 8:48 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T. D. 6258]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

DETERMINATION OF SOURCES OF INCOME AND TAXATION OF NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

On May 1, 1956, notice of proposed rule making regarding the regulations under sections 861 to 894, inclusive, of the Internal Revenue Code of 1954, relating to determination of sources of income and taxation of nonresident aliens and foreign corporations, was published in the FEDERAL REGISTER (21 F. R. 2819). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, are hereby adopted:

TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

DETERMINATION OF SOURCES OF INCOME

AUTHORITY: §§ 1.861 to 1.894-1, issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

TAX BASED OF INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

DETERMINATION OF SOURCES OF INCOME

§ 1.861 *Statutory provisions; income from sources within the United States.*

SEC. 861. *Income from sources within the United States*—(a) *Gross income from sources within United States.* The following items of gross income shall be treated as income from sources within the United States:

(1) *Interest.* Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) Interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States,

(B) Interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Secretary or his delegate that less than 20 percent of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, and

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(2) *Dividends.* The amount received as dividends—

(A) From a domestic corporation other than a corporation entitled to the benefits of section 931, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary or his delegate to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) From a foreign corporation unless less than 50 percent of the gross income of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this part; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends.

(3) *Personal services.* Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) Such compensation does not exceed $3,000 in the aggregate, and

(C) The compensation is for labor or services performed as an employee of or under a contract with—

(i) A nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) A domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such corporation.

(4) *Rentals and royalties.* Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.

(5) *Sale of real property.* Gains, profits, and income from the sale of real property located in the United States.

(6) *Sale of personal property.* Gains, profits, and income derived from the purchase of personal property without the United States (other than within a possession of the United States) and its sale within the United States.

(b) *Taxable income from sources within United States.* From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

§ 1.861-1 *Income from sources within the United States—*(a) *Categories of income.* Sections 861 to 864, inclusive, and the regulations thereunder determine the sources of income for purposes of the income tax. These sections explicitly allocate certain important sources of income to the United States or to areas outside the United States, as the case may be; and, with respect to the remaining income (particularly that derived partly from sources within and partly from sources without the United States), authorize the Secretary or his delegate to determine the income derived from sources within the United States, either by rules of separate allocation or by processes or formulas of general apportionment. The statute provides for the following three categories of income:

(1) *Within the United States.* The gross income from sources within the United States, consisting of the items of gross income specified in section 861 (a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863 (a). See §§ 1.861-2 to 1.861-7, inclusive, and § 1.863-1. The taxable income from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 861 (b) and 863 (a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§ 1.861-8 and 1.863-1.

(2) *Without the United States.* The gross income from sources without the United States, consisting of the items of gross income specified in section 862 (a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863 (a). See §§ 1.862-1 and 1.863-1. The taxable income from

sources without the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 862 (b) and 863 (a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§ 1.862-1 and 1.863-1.

(3) *Partly within and partly without the United States.* The gross income derived from sources partly within and partly without the United States, consisting of the items specified in section 863 (b) (1), (2), and (3). The taxable income allocated or apportioned to sources within the United States, in the case of such income, shall be determined in accordance with section 863 (a) or (b). See §§ 1.863-2 to 1.863-5, inclusive.

(b) *Taxable income from sources within the United States.* The taxable income from sources within the United States shall consist of the taxable income described in paragraph (a) (1) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a) (3) of this section.

(c) *Computation of income.* If a taxpayer has gross income from sources within or without the United States, together with gross income derived partly from sources within and partly from sources without the United States, the amounts thereof, together with the expenses and investment applicable thereto, shall be segregated; and the taxable income from sources within the United States shall be separately computed therefrom.

§ 1.861-2 *Interest*—(a) *General.* There shall be included in the gross income from sources within the United States all interest received or accrued, as the case may be, from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents of the United States, whether corporate or otherwise, except—

(1) *Deposits.* Interest paid on deposits with persons, including individuals, partnerships, or corporations, carrying on the banking business, to persons not engaged in business within the United States;

(2) *Payer deriving income abroad.* Interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the district director (or, if applicable, the Director of International Operations) that less than 20 percent of the gross income of such resident payer or domestic corporation has been derived from sources within the United States, as determined under the provisions of sections 861 to 864, inclusive, and the regulations thereunder, for the 3-year period ending with the close of the taxable year of the payer which precedes the payment of such interest, or for such part of that period as may be applicable; and

(3) *Bankers' acceptances.* Income derived by a foreign central bank of issue from bankers' acceptances. A foreign central bank of issue means a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such banks are generally the custodians of the banking reserves of their countries.

(b) *Interest on refunds.* Interest received from the United States on a refund of Federal income taxes constitutes income from sources within the United States.

(c) *Statement with return.* Any taxpayer who excludes from gross income items of the type specified in paragraph (a) (1), (2), or (3) of this section shall file with his return a statement setting forth the amount of such income and such information as may be necessary to show that the income is of the type specified therein.

§ 1.861-3 *Dividends*—(a) *General.* Gross income from sources within the United States includes dividends, as defined by section 316 and the regulations thereunder, from—

(1) *Domestic corporation.* A domestic corporation other than one entitled to the benefits of section 931, and other than a corporation less than 20 percent of the gross income of which is shown to the satisfaction of the district director (or, if applicable, the Director of International Operations) to have been derived from sources within the United States, as determined under the provisions of sections 861 to 864, inclusive, and the regulations thereunder, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends, or for such part of such period as the corporation has been in existence; or

(2) *Foreign corporation.* A foreign corporation unless less than 50 percent of its gross income for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends, or for such part of such period as it has been in existence, was derived from sources within the United States, as determined under the provisions of sections 861 to 864, inclusive and the regulations thereunder; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources. However, for purposes of sections 901 to 905, inclusive, and the regulations thereunder, relating to the foreign tax credit, dividends from a foreign corporation shall be treated as income from sources without the United States to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends.

(b) *Presumption as to source.* Dividends will be treated as income from sources within the United States (except for purposes of sections 901 to 905, inclusive, and the regulations thereunder) unless the taxpayer submits with his return sufficient data to establish to the satisfaction of the district director (or, if applicable, the Director of International Operations) that, in accordance with paragraph (a) (1) or (2) of this section, they are not income from sources within the United States.

§ 1.861-4 *Compensation for labor or personal services*—(a) *General.* Gross income from sources within the United States includes compensation for labor or personal services performed in the United States regardless of the residence of the payer, of the place in which the contract for service was made, or of the place of payment; except that such compensation shall be deemed not to be income from sources within the United States, if—

(1) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year;

(2) The compensation does not exceed $3,000 in the aggregate; and

(3) The compensation is for labor or services performed as an employee of, or under a contract with—

(i) A nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) A domestic corporation, if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by that corporation.

(b) *Amount includible in gross income.* If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made.

(c) *Coastwise travel.* Except as to income excluded by paragraph (a) of this section, wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a coastwise vessel are to be regarded as from sources within the United States.

§ 1.861-5 *Rentals and royalties.* Gross income from sources within the United States includes rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, in the United States, patents, copyrights, secret processes and formulas, goodwill, trade-marks, trade brands, franchises, and other like property. The income arising from the rental of property, whether tangible or intangible, located within the United States, or from the use of property, whether tangible or intangible, within the United States, is from sources within the United States.

§ 1.861-6 *Sale of real property.* Gross income from sources within the United States includes gain, computed under the provisions of section 1001 and the regulations thereunder, derived from the sale or other disposition of real property located in the United States. For the treatment of capital gains and losses, see sections 1201 to 1241, inclusive, and the regulations thereunder.

§ 1.861-7 *Sale of personal property*—(a) *General.* Gains, profits, and income derived from the purchase and sale of personal property shall be treated as derived entirely from the country in which the property is sold. Thus, gross income from sources within the United States includes gains, profits, and income derived from the purchase of personal property without the United States and its sale within the United States.

(b) *Purchase within a possession.* Notwithstanding paragraph (a) of this section, income derived from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States. See section 863 (b) (3) and § 1.863-2.

(c) *Country in which sold.* For the purposes of sections 861 to 864, inclusive, and the regulations thereunder, a sale of personal property is consummated at the time when, and the place where, the rights, title, and interest of the seller in the property are transferred to the buyer. Where bare legal title is retained by the seller, the sale shall be deemed to have occurred at the time and place of passage to the buyer of beneficial ownership and the risk of loss. However, in any case in which the sales transaction is arranged in a particular manner for the primary purpose of tax avoidance, the foregoing rules will not be applied. In such cases, all factors of the transaction, such as negotiations, the execution of the agreement, the location of the property, and the place of payment, will be considered, and the sale will be treated as having been consummated at the place where the substance of the sale occurred.

(d) *Production and sale.* For provisions respecting the source of income derived from the sale of personal property produced by the taxpayer, see section 863 (b) (2) and §§ 1.863-1 (b) and 1.863-2.

(e) *Section 306 stock.* For determining the source of gain on the disposition of section 306 stock, see section 306 (f) and the regulations thereunder.

§ 1.861-8 *Computation of taxable income from sources within the United States*—(a) *General.* From the items of gross income specified in §§ 1.861-2 to 1.861-7, inclusive, as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. The ratable part is based upon the ratio of gross income from sources within the United States to the total gross income.

Example. A taxpayer engaged in trade or business receives for the taxable year gross income from all sources in the amount of $180,000, one-fifth of which ($36,000) is from sources within the United States, computed as follows:

Interest on bonds of a domestic corporation	$9,000
Dividends on stock of a domestic corporation	4,000
Royalty for the use within the United States of patents	12,000
Gain from sale of real property located within the United States	11,000
Total	36,000

The remainder of the gross income is from sources without the United States, as determined under § 1.862-1. The expenses of the taxpayer for the year amount to $78,000. Of these expenses the amount of $8,000 is properly allocated to income from sources within the United States, and the amount of $40,000 is properly allocated to income from sources without the United States. The remainder of the expenses ($30,000) cannot be definitely allocated to any item or class of gross income. A ratable part thereof, based upon the relation of gross income from sources within the United States to the total gross income, shall be deducted in computing taxable income from sources within the United States. Thus, there are deducted from the $36,000 of gross income from sources within the United States expenses amounting to $14,000, representing $8,000 properly apportioned to the income from sources within the United States and $6,000 of the expenses (one-fifth thereof) which cannot definitely be allocated to any item or class of gross income. The remainder ($22,000) is the taxable income from sources within the United States.

(b) *Personal exemptions.* The deductions for the personal exemptions allowed by section 151 or 642 (b) shall not be taken into account for purposes of paragraph (a) of this section but shall be allowed as deductions from the taxable income computed thereunder, if and to the extent that such deductions are allowable for purposes of computing the taxable income of the taxpayer. See sections 641 (b), 873 (d), 904 (b), and 931 (e), and the regulations thereunder.

(c) *Special deductions.* The special deductions allowed in the case of a corporation by section 241 (relating to the deductions for partially tax-exempt interest, dividends received, etc.), section 922 (relating to Western Hemisphere trade corporations), and section 941 (relating to China Trade Act corporations) shall be taken into account for purposes of paragraph (a) of this section.

(d) *Exempt income.* No deduction shall be allowed under this section for the amount of any item or part thereof allocable to a class or classes of exempt income. See section 265 and the regulations thereunder.

§ 1.862 *Statutory provisions; income from sources without the United States.*

SEC. 862. *Income from sources without the United States*—(a) *Gross income from sources without United States.* The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in section 861 (a) (1);

(2) Dividends other than those derived from sources within the United States as provided in section 861 (a) (2);

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) Gains, profits, and income from the sale of real property located without the United States; and

(6) Gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States.

(b) *Taxable income from sources without United States.* From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States.

§ 1.862-1 *Income specifically from sources without the United States*—(a) *Gross income.* The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that specified in section 861 (a) (1) as being derived from sources within the United States;

(2) Dividends other than those derived from sources within the United States as provided in section 861 (a) (2);

(3) Compensation for labor or personal services performed without the United States (for the treatment of compensation for labor or personal services performed partly within the United States and partly without the United States, see paragraph (b) of § 1.861-4);

(4) Rentals or royalties from property located without the United Sates or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, without the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property;

(5) Gains, profits, and income from the sale of real property located without the United States; and

(6) Gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States. Income derived from the purchase of personal property within the United States and its sale within a possession of the United States shall be treated as derived entirely from within that possession of the United States. For determining the time and place of sale of personal property for purposes of this subparagraph, see paragraph (c) of § 1.861-7.

(b) *Taxable income.* The taxable income from sources without the United States, in the case of the items of gross income specified in paragraph (a) of this section, shall be determined on the same basis as that used in § 1.861-8 for determining the taxable income from sources within the United States.

§ 1.863 *Statutory provisions; items not specified in section 861 or 862.*

SEC. 863. *Items not specified in section 861 or 862*—(a) *Allocation under regulations.* Items of gross income, expenses, losses, and deductions, other than those specified in sections 861 (a) and 862 (a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary or his delegate. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) *Income partly from within and partly from without the United States.* In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary or his delegate. Gains, profits, and income—

(1) From transportation or other services rendered partly within and partly without the United States,

(2) From the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, or

(3) Derived from the purchase of personal property within a possession of the United States and its sale within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

§ 1.863-1 *Allocation of gross income under section 863 (a)*—(a) *General.* Items of gross income other than those specified in section 861 (a) (§§ 1.861-2 to 1.861-7, inclusive) and section 862 (a) (§ 1.862-1) shall be allocated or apportioned to sources within or without the United States, as provided in section 863 (a); however, see § 1.863-2 for alternative method of determining the taxable income from sources within the United States in the case of the items specified in paragraph (b) of § 1.863-2.

(b) *Natural resources.* The income derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, located within the United States, and from the sale by the producer of the products thereof within or without the United States, shall ordinarily be included in gross income from sources within the United States. If, however, it is shown to the satisfaction of the district director (or, if applicable, the Director of International Operations) that, due to the peculiar conditions of production and sale in a specific case or for other reasons, not all of the gross income derived therefrom should be allocated to sources within the United States, an apportionment thereof to sources within the United States and to sources without the United States shall be made as provided by section 863 (b) and § 1.863-2.

(c) *Taxable income.* The taxable income from sources within or without the United States, in the case of the items of gross income allocated under section 863 (a), shall be determined on the same basis as that used in § 1.861-8 for determining the taxable income from sources within the United States. See also paragraph (b) of § 1.862-1.

§ 1.863-2 *Income derived partly from sources within and partly from sources without the United States*—(a) *General.* Section 863 (b) provides an alternative method for determining the taxable income from sources within the United States in the case of gross income derived from sources partly within and partly without the United States. Under this method the entire taxable income in the case of such income is first determined by deducting the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. Then, pursuant to processes or formulas of general apportionment prescribed by the Secretary or his delegate, a portion of such entire taxable income is determined as being attributable to sources within the United States. Thus, the income treated as derived partly from sources within and partly from sources without the United States may be allocated to sources within or without the United States pursuant to § 1.863-1 or apportioned to such sources in accordance with the method described in this section.

(b) *Applicable items.* The income to which this section applies (and which is treated as derived partly from sources within and partly from sources without the United States) shall consist of gains, profits, and income—

(1) From transportation or other services rendered partly within and partly without the United States;

(2) From the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States; or

(3) Derived from the purchase of personal property within a possession of the United States and its sale within the United States.

(c) *Cross reference.* For allocation or apportionment under § 1.863-1 or this section in the case of the principal items to which this section applies, see §§ 1.863-3, 1.863-4, and 1.863-5.

§ 1.863-3 *Income from the sale of personal property derived partly from* *within and partly from without the United States*—(a) *General*—(1) *Classes of income.* Income from the sale of property to which paragraph (b) (2) and (3) of § 1.863-2 applies is divided into two classes for purposes of this section, namely, income which is treated as derived partly from sources within the United States and partly from sources within a foreign country, and income which is treated as derived partly from sources within the United States and partly from sources within a possession of the United States.

(2) *Definition.* For purposes of this section, the word "produced" includes created, fabricated, manufactured, extracted, processed, cured, or aged. For determining the time and place of sale of personal property for purposes of this section, see paragraph (c) of § 1.861-7.

(b) *Income partly from sources within a foreign country*—(1) *General.* This paragraph relates to gains, profits, and income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country, or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States. Pursuant to section 863 (b) such items shall be treated as derived partly from sources within the United States and partly from sources within a foreign country.

(2) *Allocation or apportionment.* The taxable income from sources within the United States, in the case of the items to which this paragraph applies, shall be determined according to the examples set forth in this subparagraph. For such purposes, the deductions for the personal exemptions shall not be taken into account, but the special deductions described in paragraph (c) of § 1.861-8 shall be taken into account.

Example (1). Where the manufacturer or producer regularly sells part of his output to wholly independent distributors or other selling concerns in such a way as to establish fairly an independent factory or production price—or shows to the satisfaction of the district director (or, if applicable, the Director of International Operations) that such an independent factory or production price has been otherwise established—unaffected by considerations of tax liability, and the selling or distributing branch or department of the business is located in a different country from that in which the factory is located or the production carried on, the taxable income attributable to sources within the United States shall be computed by an accounting which treats the products as sold by the factory or productive department of the business to the distributing or selling department at the independent factory price so established. In all such cases the basis of the accounting shall be fully explained in a statement attached to the return for the taxable year.

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States, the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income.

(ii) Of the amount of taxable income so determined, one-half shall be apportioned in accordance with the value of the taxpayer's property within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the value of the taxpayer's property within the United States, and the denominator of which consists of the value of the taxpayer's property both within the United States and within the foreign country. The remaining one-half of such taxable income shall be apportioned in accordance with the gross sales of the taxpayer within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the taxpayer's gross sales for the taxable year or period within the United States, and the denominator of which consists of the taxpayer's gross sales for the taxable year or period both within the United States and within the foreign country.

(iii) The term "gross sales", as used in this example, refers only to the sales of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States.

(iv) The term "property", as used in this example, includes only the property held or used to produce income which is derived from such sales. Such property should be taken at its actual value, which in the case of property valued or appraised for purposes of inventory, depreciation, depletion, or other purposes of taxation shall be the highest amount at which so valued or appraised, and which in other cases shall be deemed to be its book value in the absence of affirmative evidence showing such value to be greater or less than the actual value. The average value during the taxable year or period shall be employed. The average value of property as above prescribed at the beginning and end of the taxable year or period ordinarily may be used, unless by reason of material changes during the taxable year or period such average does not fairly represent the average for such year or period, in which event the average shall be determined upon a monthly or daily basis.

(v) Bills and accounts receivable shall (unless satisfactory reason for a different treatment is shown) be assigned or allocated to the United States when the debtor resides in the United States, unless the taxpayer has no office, branch, or agent in the United States.

Example (3). Application for permission to base the return upon the taxpayer's books of account will be considered by the district director (or, if applicable, the Director of International Operations) in the case of any taxpayer who, in good faith and unaffected by considerations of tax liability, regularly employs in his books of account a detailed allocation of receipts and expenditures which reflects more clearly than the processes or formulas herein prescribed the taxable income derived from sources within the United States.

(c) *Income partly from sources within a possession of the United States*—(1) *General.* This paragraph relates to gains, profits, and income which, pursuant to section 863 (b), are treated as derived partly from sources within the United States and partly from sources within a possession of the United States. The items so treated are described in subparagraphs (3) and (4) of this paragraph.

(2) *Allocation or apportionment.* The taxable income from sources within the United States, in the case of the items to which this paragraph applies, shall be determined according to the examples set forth in subparagraphs (3) and (4) of this paragraph. For such purposes, the deductions for the personal exemptions shall not be taken into account, but the special deductions described in paragraph (c) of § 1.861-8 shall be taken into account.

(3) *Personal property produced and sold.* This subparagraph relates to gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a possession of the United States, or produced (in whole or in part) by the taxpayer within a possession of the United States and sold within the United States.

Example (1). Same as example (1) under paragraph (b) (2) of this section.

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a possession of the United States, or produced (in whole or in part) by the taxpayer within a possession of the United States and sold within the United States, the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income.

(ii) Of the amount of taxable income so determined, one-half shall be apportioned in accordance with the value of the taxpayer's property within the United States and within the possession of the United States, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the value of the taxpayer's property within the United States, and the denominator of which consists of the value of the taxpayer's property both within the United States and within the possession of the United States. The remaining one-half of such taxable income shall be apportioned in accordance with the total business of the taxpayer within the United States and within the possession of the United States, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the amount of the taxpayer's business for the taxable year or period within the United States, and the denominator of which consists of the amount of the taxpayer's business for the taxable year or period both within the United States and within the possession of the United States.

(iii) The "business of the taxpayer", as used in this example, shall be measured by the amounts which the taxpayer paid out during the taxable year or period for wages, salaries, and other compensation of employees and for the purchase of goods, materials, and supplies consumed in the regular course of business, plus the amounts received during the taxable year or period from gross sales, such expenses, purchases, and gross sales being limited to those attributable to the production (in whole or in part) of personal property within the United States and its sale within a possession of the United States or to the production (in whole or in part) of personal property within a possession of the United States and its sale within the United States. The term "property", as used in this example, includes only the property held or used to produce income which is derived from such sales.

Example (3). Same as example (3) under paragraph (b) (2) of this section.

(4) *Personal property purchased and sold*. This subparagraph relates to gross income derived from the purchase of personal property within a possession of the United States and its sale within the United States.

Example (1). (i) The taxable income shall first be computed by deducting from such gross income the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income.

(ii) The amount of taxable income so determined shall be apportioned in accordance with the total business of the taxpayer within the United States and within the possession of the United States, the portion attributable to sources within the United States being that percentage of such taxable income which the amount of the taxpayer's business for the taxable year or period within the United States bears to the amount of the taxpayer's business for the taxable year or period both within the United States and within the possession of the United States.

(iii) The "business of the taxpayer", as that term is used in this example, shall be measured by the amounts which the taxpayer paid out during the taxable year or period for wages, salaries, and other compensation of employees and for the purchase of goods, materials, and supplies sold or consumed in the regular course of business, plus the amount received during the taxable year or period from gross sales, such expenses, purchases, and gross sales being limited to those attributable to the purchase of personal property within a possession of the United States and its sale within the United States.

Example (2). Same as example (3) under paragraph (b) (2) of this section.

§ 1.863-4 *Transportation service*—(a) *General*. A taxpayer carrying on the business of transportation service between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

(b) *Gross income*. The gross income from sources within the United States derived from such services shall be determined by taking such a portion of the total gross revenues therefrom as (1) the sum of the costs or expenses of such transportation business carried on by the taxpayer within the United States and a reasonable return upon the property used in its transportation business while within the United States bears to (2) the sum of the total costs or expenses of such transportation business carried on by the taxpayer and a reasonable return upon the total property used in such transportation business. Revenues from operations incidental to transportation services, such as the sale of money orders, shall be apportioned on the same basis as direct revenues from transportation services.

(c) *Allocation of costs or expenses*. In allocating the total costs or expenses incurred in such transportation business, costs or expenses incurred in connection with that part of the services which was wholly rendered in the United States shall be assigned to the cost of transportation business within the United States. For example, expenses of loading and unloading in the United States, rentals, office expenses, salaries, and wages wholly incurred for services rendered to the taxpayer in the United States belong to this class. Costs and expenses incurred in connection with services rendered partly within and partly without the United States may be prorated on a reasonable basis between such services. For example, ship wages, charter money, insurance, and supplies chargeable to voyage expenses shall ordinarily be prorated for each voyage on the basis of the proportion which the number of days the ship was within the territorial limits of the United States bears to the total number of days on the voyage; and fuel consumed on each voyage may be prorated on the basis of the proportion which the number of miles sailed within the territorial limits of the United States bears to the total number of miles sailed on the voyage. For other expenses entering into the cost of services, only such expenses as are allowable deductions under the internal revenue laws shall be taken into account.

(d) *Items not included as costs or expenses*—(1) *Taxes and interest*. Income, war profits, and excess profits taxes shall not be regarded as costs or expenses for the purpose of determining the proportion of gross income from sources within the United States; and, for such purpose, interest and other expenses for the use of borrowed capital shall not be taken into the cost of services rendered, for the reason that the return upon the property used measures the extent to which such borrowed capital is the source of the income. See paragraph (f) (2) of this section.

(2) *Other business activity and general expenses*. If a taxpayer subject to this section is also engaged in a business other than that of providing transportation service between points in the United States and points outside the United States, the costs and expenses, including taxes, properly apportioned or allocated to such other business shall be excluded both from the deductions and from the apportionment process prescribed in paragraph (c) of this section; but, for the purpose of determining taxable income, a ratable part of any general expenses, losses, or deductions, which cannot definitely be allocated to some item or class of gross income, may be deducted from the gross income from sources within the United States after the amount of such gross income has been determined. Such ratable part shall ordinarily be based upon the ratio of gross income from sources within the United States to the total gross income. See paragraph (f) (3) of this section.

(3) *Personal exemptions and special deductions*. The deductions for the personal exemptions, and the special deductions described in paragraph (c) of § 1.861-8, shall not be taken into account for purposes of paragraph (c) of this section.

(e) *Property used while within the United States*—(1) *General*. The value of the property used shall be determined upon the basis of cost less depreciation. Eight percent may ordinarily be taken as a reasonable rate of return to apply to such property. The property taken shall be the average property employed in the transportation service between points in the United States and points outside the United States during the taxable year.

(2) *Average property*. For ships, the average shall be determined upon a daily basis for each ship, and the amount to be apportioned for each ship as assets employed within the United States shall be computed upon the proportion which the number of days the ship was within the territorial limits of the United States bears to the total number of days the ship was in service during the taxable period. For other assets employed in the transportation business, the average of the assets at the beginning and end of the taxable period ordinarily may be taken, but if the average so obtained does not, by reason of material changes during the taxable year, fairly represent the average for such year either for the assets employed in the transportation business in the United States or in total, the average must be determined upon a monthly or daily basis.

(3) *Current assets*. Current assets shall be decreased by current liabilities and allocated to services between the United States and foreign countries and to other services. The part allocated to services between the United States and foreign countries shall be based on the proportion which the gross receipts from such services bear to the gross receipts from all services. The amount so allocated to services between the United States and foreign countries shall be further allocated to services rendered within the United States and to services rendered without the United States. The portion allocable to services rendered within the United States shall be based on the proportion which the expenses incurred within the territorial limits of the United States bear to the total expenses incurred in services between the United States and foreign countries.

(f) *Taxable income*—(1) *General*. In computing taxable income from sources within the United States there shall be allowed as deductions from the gross income from such sources, determined in accordance with paragraph (b) of this section, (i) the expenses of the transportation business carried on within the United States (as determined under paragraphs (c) and (d) of this section) and (ii) the expenses and deductions determined in accordance with this paragraph.

(2) *Interest and taxes*. Interest and income, war profits, and excess profits taxes shall be excluded from the apportionment process, as indicated in paragraph (d) of this section; but for the purpose of computing taxable income there may be deducted from the gross income from sources within the United States, after the amount of such gross income has been determined, a ratable part of all interest deductible under section 163 and of all income, war profits, and excess profits taxes deductible under section 164, paid or accrued in respect of the business of transportation service

between points in the United States and points outside the United States. The ratable part shall ordinarily be based upon the ratio of gross income from sources within the United States to the total gross income, from such transportation service.

(3) *General expenses.* General expenses, losses, or deductions shall be deducted under this paragraph to the extent indicated in paragraph (d) (2) of this section.

(4) *Personal exemptions.* The deductions for the personal exemptions shall be allowed under this paragraph to the same extent as provided by paragraph (b) of § 1.861-8.

(5) *Special deductions.* The special deductions allowed in the case of a corporation by sections 241, 922, and 941 shall be allowed under this paragraph to the same extent as provided by paragraph (c) of § 1.861-8.

(g) *Allocation based on books of account.* Application for permission to base the return upon the taxpayer's books of account will be considered by the district director (or, if applicable, the Director of International Operations) in the case of any taxpayer subject to this section, who, in good faith and unaffected by considerations of tax liability, regularly employs in his books of account a detailed allocation of receipts and expenditures which more clearly reflects the income derived from sources within the United States than does the process prescribed by paragraphs (b) to (f), inclusive, of this section.

§ 1.863-5 *Telegraph and cable services*—(a) *General.* A taxpayer carrying on the business of transmission of telegraph or cable messages between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

(b) *Gross income.* The gross income from sources within the United States derived from such services shall be determined by adding the gross revenues derived from messages originating in the United States and amounts collected abroad on collect messages originating in the United States and then deducting from such sum amounts paid or accrued for transmission of messages beyond the taxpayer's own circuit. Amounts received by the taxpayer in the United States with respect to collect messages originating without the United States shall be excluded from such gross income.

(c) *Taxable income.* In computing taxable income from sources within the United States, the following items shall be allowed as deductions from the gross income determined in accordance with paragraph (b) of this section:

(1) All expenses incurred in the United States (not including any general overhead expenses) incident to the carrying on of the business in the United States;

(2) All direct expenses incurred abroad in the transmission of messages originating in the United States (not including any general overhead expenses or maintenance, repairs, and depreciation of cables and not including any amount already deducted in computing gross income);

(3) Depreciation of property (other than cables) located in the United States and used in the trade or business therein; and,

(4) A proportionate part of the general overhead expenses (not including any items incurred abroad corresponding to those enumerated in subparagraphs (1), (2), and (3) of this paragraph) and of maintenance, repairs, and depreciation of cables of the entire cable system of the enterprise, based on the ratio which the number of words originating in the United States bears to the total words transmitted by the enterprise.

(5) The deductions for the personal exemptions, and the special deductions allowed by sections 241, 922, and 941, but only to the extent provided by paragraphs (b) and (c) of § 1.861-8.

§ 1.863-6 *Income from sources within a foreign country or possession of the United States.* The principles applied in §§ 1.861-1 to 1.863-5, inclusive, for determining the gross and the taxable income from sources within and without the United States shall be applied, for purposes of the income tax, in determining the gross and the taxable income from sources within and without a foreign country, or within and without a possession of the United States.

§ 1.864 *Statutory provisions; definitions.*

SEC. 864. *Definitions.* For purposes of this part, the word "sale" includes "exchange"; the word "sold" includes "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged".

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Nonresident Alien Individuals

§ 1.871 *Statutory provisions; tax on nonresident alien individuals.*

SEC. 871. *Tax on nonresident alien individuals*—(a) *No United States business and gross income of not more than $15,400*—(1) *Imposition of tax.* Except as otherwise provided in subsection (b) there is hereby imposed for each taxable year, in lieu of the tax imposed by section 1, on the amount received, by every nonresident alien individual not engaged in trade or business within the United States, from sources within the United States, as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (including amounts described in section 402 (a) (2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets), a tax of 30 percent of such amount.

(2) *Capital gains of aliens temporarily present in the United States.* In the case of a nonresident alien individual not engaged in trade or business in the United States, there is hereby imposed for each taxable year, in addition to the tax imposed by paragraph (1)—

(A) If he is present in the United States for a period or periods aggregating less than 90 days during such taxable year—a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected during his presence in the United States exceed his losses, allocable to sources within the United States, from such sales or exchanges effected during such presence; or

(B) If he is present in the United States for a period or periods aggregating 90 days or more during such taxable year—a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during such year exceed his losses, allocable to sources within the United States, from such sales or exchanges effected at any time during such year.

For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such individual were engaged in trade or business in the United States, except that such gains and losses shall be computed without regard to section 1202 (relating to deduction for capital gains) and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212.

(b) *No United States business and gross income of more than $15,400.* A nonresident alien individual not engaged in trade or business within the United States shall be taxable without regard to subsection (a) if during the taxable year the sum of the aggregate amount received from the sources specified in subsection (a) (1), plus the amount by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges (determined in accordance with subsection (a) (2)) is more than $15,400, except that—

(1) The gross income shall include only income from the sources specified in subsection (a) (1) plus any gain (to the extent provided in subchapter P; sec. 1201 and following, relating to capital gains and losses) from a sale or exchange of a capital asset if such gain would be taken into account were the tax being determined under subsection (a) (2);

(2) The deductions (other than the deduction for charitable contributions and gifts provided in section 873 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a), except that any loss from the sale or exchange of a capital asset shall be allowed (to the extent provided in subchapter P without the benefit of the capital loss carryover provided in section 1212) if such loss would be taken into account were the tax being determined under subsection (a) (2);

(3) The taxes imposed by this subtitle (under section 1, or under section 1201 (b)) shall, in no case, be less than 30 percent of the sum of—

(A) The aggregate amount received from the sources specified in subsection (a) (1), plus

(B) The amount, determined under subsection (a) (2), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges.

(c) *United States business.* A nonresident alien individual engaged in trade or business within the United States shall be taxable without regard to subsection (a). For purposes of part I, this section, sections 881 and 882, and chapter 3, the term "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services—

(1) For a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(2) For an office or place of business maintained by a domestic corporation in a foreign country or in a possession of the United States,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000. Such term does not include the effecting, through a resident broker, commission agent, or custodian, of transactions in the United States in stocks or securities, or in commodities (if of a kind customarily dealt in on an organized commodity exchange, if the transaction is of the kind customarily consummated at such place, and if the alien, partnership, or corporation has no office or place of business in the United States at any time during the taxable year through which or by the direction of which such transactions in commodities are effected).

(d) *Doubling of tax.* For doubling of tax on citizens of certain foreign countries, see section 891.

§ 1.871-1 *Taxation of aliens.* For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident aliens are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. Nonresident aliens are taxable only on income from sources within the United States. For classification of nonresident aliens, see § 1.871-7. For determination of the sources of income, see §§ 1.861-1 to 1.863-6, inclusive.

§ 1.871-2 *Determining residence of alien individuals*—(a) *General.* The term "nonresident alien individual" means an individual whose residence is not within the United States, and who is not a citizen of the United States. The term includes a nonresident alien fiduciary. For such purpose the term "fiduciary" shall have the meaning assigned to it by section 7701 (a) (6) and the regulations thereunder. For presumption as to an alien's nonresidence, see paragraph (b) of § 1.871-4.

(b) *Residence defined.* An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but, if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of this section, in the absence of exceptional circumstances.

§ 1.871-3 *Residence of alien seamen.* In order to determine whether an alien seaman is a resident of the United States for purposes of the income tax, it is necessary to decide whether the presumption of nonresidence (as prescribed by paragraph (b) of § 1.871-4) is overcome by facts showing that he has established a residence in the United States. Residence may be established on a vessel regularly engaged in coastwise trade, but the mere fact that a sailor makes his home on a vessel which is flying the United States flag and is engaged in foreign trade is not sufficient to establish residence in the United States, even though the vessel, while carrying on foreign trade, touches at American ports. An alien seaman may acquire an actual residence in the United States within the rules laid down in § 1.871-4, although the nature of his calling requires him to be absent for a long period from the place where his residence is established. An alien seaman may acquire such a residence at a sailors' boarding house or hotel, but such a claim should be carefully scrutinized in order to make sure that such residence is bona fide. The filing of Form 1078 or taking out first citizenship papers is proof of residence in the United States from the time the form is filed or the papers taken out, unless rebutted by other evidence showing an intention to be a transient.

§ 1.871-4 *Proof of residence of aliens*—(a) *Rules of evidence.* The following rules of evidence shall govern in determining whether or not an alien within the United States has acquired residence therein for purposes of the income tax.

(b) *Nonresidence presumed.* An alien, by reason of his alienage, is presumed to be a nonresident alien.

(c) *Presumption rebutted*—(1) *Departing alien.* In the case of an alien who presents himself for determination of tax liability before departure from the United States, the presumption as to the alien's nonresidence may be overcome by proof—

(i) That the alien, at least six months before the date he so presents himself, has filed a declaration of his intention to become a citizen of the United States under the naturalization laws; or

(ii) That the alien, at least six months before the date he so presents himself, has filed Form 1078 or its equivalent; or

(iii) Of acts and statements of the alien showing a definite intention to acquire residence in the United States or showing that his stay in the United States has been of such an extended nature as to constitute him a resident.

(2) *Other aliens.* In the case of other aliens, the presumption as to the alien's nonresidence may be overcome by proof—

(i) That the alien has filed a declaration of his intention to become a citizen of the United States under the naturalization laws; or

(ii) That the alien has filed Form 1078 or its equivalent; or

(iii) Of acts and statements of the alien showing a definite intention to acquire residence in the United States or showing that his stay in the United States has been of such an extended nature as to constitute him a resident.

(d) *Certificate.* If, in the application of paragraphs (c) (1) (iii) or (2) (iii) of this section, the internal revenue officer or employee who examines the alien is in doubt as to the facts, such officer or employee may, to assist him in determining the facts, require a certificate or certificates setting forth the facts relied upon by the alien seeking to overcome the presumption. Each such certificate, which shall contain, or be verified by, a written declaration that it is made under the penalties of perjury, shall be executed by some credible person or persons, other than the alien and members of his family, who have known the alien at least six months before the date of execution of the certificate or certificates.

§ 1.871-5 *Loss of residence by an alien.* An alien who has acquired residence in the United States retains his status as a resident until he abandons the same and actually departs from the United States. An intention to change his residence does not change his status as a resident alien to that of a nonresident alien. Thus, an alien who has acquired a residence in the United States is taxable as a resident for the remainder of his stay in the United States.

§ 1.871-6 *Duty of employer to determine status of alien employee*—(a) *Proof of status required.* If wages are paid to an alien without withholding the tax under chapter 3 of the 1954 Code, or, if applicable, under section 143 of the 1939 Code, except insofar as the regulations thereunder permit exemption from withholding, then the employer must be prepared to prove the status of the alien as provided in §§ 1.871-1 to 1.871-5, inclusive.

(b) *Evidence of residence.* An employer may rely upon the evidence of residence afforded by the fact that an alien has filed Form 1078 or an equivalent written statement. In the case of payments made after December 31, 1956, this statement or form shall be filed in the manner prescribed in § 1.1441-5. An employer need not secure Form 1078 or written statement from the alien employee if he is satisfied that the alien is a resident alien. An employer who seeks to account for failure to withhold in the past, if he did not at that time secure Form 1078 or its equivalent, is permitted to prove the former status of the alien by any competent evidence.

§ 1.871-7 *Tax on nonresident alien individuals*—(a) *Classes of nonresident aliens.* For purposes of the income tax, nonresident alien individuals are divided into four classes:

(1) *Class 1.* Nonresident alien individuals not engaged in trade or business within the United States at any time during the taxable year and receiving in such year an aggregate of not more than $15,400 gross income (determined without regard to section 116) from sources within the United States consisting of—

(i) Fixed or determinable annual or periodical income, and

(ii) Amounts constituting, or considered to be, gains from the sale or exchange of capital assets, as described in paragraph (b) of this section;

(2) *Class 2.* Nonresident alien individuals not engaged in trade or business within the United States at any time during the taxable year and receiving in such year an aggregate of more than $15,400 gross income (determined without regard to section 116) described under class 1;

(3) *Class 3.* Nonresident alien individuals who at any time during the taxable year are engaged in trade or business within the United States; and

(4) *Class 4.* Nonresident alien individuals who are bona fide residents of Puerto Rico during the entire taxable year.

Individuals within classes 1 to 3, inclusive, are subject to tax pursuant to the provisions of sections 871 to 877, inclusive, and the regulations thereunder. The provisions of those sections do not apply to individuals within class 4, but such individuals are subject to the tax imposed by section 1. See § 1.876–1. If the gross income of a nonresident alien individual includes income on which the tax is limited by tax convention, see paragraph (e) of this section.

(b) *No United States business; gross income of not more than $15,400*—(1) *Imposition of tax.* Except as otherwise provided by paragraph (e) of this section, a nonresident alien individual within class 1 is not subject to the tax imposed by section 1 but, pursuant to the provisions of section 871 (a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under subparagraphs (2), (3), and (4) of this paragraph and received during the taxable year from sources within the United States. For this purpose the source of the income shall be determined in accordance with the provisions of sections 861 to 864, inclusive, and the regulations thereunder. For the purposes of section 871 (a) (1) "amount received" means "gross income."

(2) *Fixed or determinable annual or periodical income*—(i) *Items subject to tax.* The tax of 30 percent applies to the gross amount received as fixed or determinable annual or periodical gains, profits, and income. Specific items of fixed or determinable annual or periodical income are enumerated in section 871 (a) (1) as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments, but other fixed or determinable annual or periodical gains, profits, and income are also subject to the tax as, for instance, royalties. As to the determination of fixed or determinable annual or periodical income, see paragraph (a) of § 1.1441–2. For special rules treating gain on the disposition of section 306 stock as fixed or determinable annual or periodical income, see section 306 (f) and the regulations thereunder.

(ii) *Losses.* In computing the income subject to tax under this subparagraph no deduction shall be allowed for any loss sustained during the taxable year.

(3) *Amounts considered to be capital gains*—(i) *Items subject to tax.* The tax of 30 percent also applies, pursuant to the provisions of section 871 (a) (1), to amounts received during the taxable year from sources within the United States which are described in section 402 (a) (2), section 631 (b) and (c), and section 1235 and are considered to be gains from the sale or exchange of capital assets. Thus, the tax applies to gain recognized on certain distributions by a qualified employees' trust where the total distributions, with respect to any employee, are payable to the distributee within one taxable year; to gain recognized under specified circumstances on the disposal of timber and coal and considered in accordance with section 1231 to be gain from the sale or exchange of a capital asset; and to gain recognized on certain transfers of patent rights by an individual.

(ii) *Ninety-day rule not applicable.* The provisions of section 871 (a) (2) do not apply to the gains described in this subparagraph; as a consequence, the taxpayer receiving these gains during a taxable year is subject to the tax of 30 percent thereon without regard to the 90-day rule of that section and even though he has not been present in the United States at any time during the taxable year.

(iii) *Recognized gain fully taxable.* The tax of 30 percent imposed upon the gains described in this subparagraph shall apply (*a*) to the full amount of gain recognized upon the transaction, (*b*) without regard to the alternative tax imposed by section 1201 upon the excess of the net long-term capital gain over the net short-term capital loss, and (*c*) without regard to the deduction allowed by section 1202 in respect of capital gains.

(iv) *Losses.* In computing the gain subject to tax under this subparagraph no deduction shall be allowed for any loss sustained during the taxable year, even though the loss is taken into account under section 1231 in determining whether the gain is considered to be gain from the sale or exchange of a capital asset.

(4) *Capital gains and losses*—(i) *Items subject to tax.* The tax of 30 percent also applies, pursuant to the provisions of section 871 (a) (2), to the excess of capital gains derived from sources within the United States over capital losses allocable to such sources, determined under the provisions of sections 861 to 864, inclusive, and the regulations thereunder, and in accordance with the provisions of this subparagraph.

(ii) *Present less than 90 days.* If he has been present in the United States for a period or periods aggregating less than 90 days during the taxable year, a nonresident alien individual not engaged in trade or business within the United States at any time during the taxable year is liable to a tax of 30 percent upon the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected during his presence in the United States exceed his losses, allocable to sources within the United States, from such sales or exchanges effected during such presence. Gains and losses from sales or exchanges of capital assets effected during the taxable year at times other than during such presence in the United States are not to be taken into account for this purpose.

(iii) *Present 90 days or more.* If he has been present in the United States for a period or periods aggregating 90 days or more during the taxable year, a nonresident alien individual not engaged in trade or business within the United States at any time during the taxable year is liable to a tax of 30 percent upon the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during that year exceed his losses, allocable to sources within the United States, from sales or exchanges effected at any time during that year. Gains and losses from sales or exchanges effected at any time during the taxable year are to be taken into account for this purpose even though the alien individual is not present in the United States at the time the sales or exchanges are effected.

(iv) *Separate periods to be aggregated.* In computing the total period of presence in the United States for a taxable year, all separate periods of presence in the United States during the taxable year are to be aggregated.

(v) *Other provisions applicable.* For the purpose of the computation of the excess of capital gains over capital losses subject to tax under this subparagraph, gains and losses shall, subject to the 90-day rule of section 871 (a) (2), be taken into account only if, and to the extent that, they would be recognized and taken into account if the nonresident alien individual were engaged in trade or business within the United States, except that the gains and losses shall be computed without regard to the provisions of section 1202, relating to the deduction for capital gains, and the losses shall be determined without the benefits of the capital loss carryover provided in section 1212. For example, any amount (other than the gains specified in subparagraph (3) of this paragraph) which, under the provisions of subtitle A of the Internal Revenue Code of 1954, is considered to be gain or loss from the sale or exchange of a capital asset shall be taken into account but only in accordance with this subdivision and subject to the provisions of section 873 and the regulations thereunder. Thus, an amount described in section 631 (b) or (c) which is considered to be loss from the sale or exchange of a capital asset would be taken into account in such manner. Also, for example, no deduction shall be allowed, pursuant to the provisions of section 267, for losses from sales or exchanges of property between related taxpayers.

(vi) *Alternative tax.* The tax shall be computed under this subparagraph without regard to the alternative tax imposed by section 1201 upon the excess of the net long-term capital gain over the net short-term capital loss.

(vii) *Allowance of losses.* In computing the tax under this subparagraph losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from sales or exchanges of capital assets.

(viii) *Gains not included.* The provisions of this subparagraph do not apply to amounts described in section 402 (a) (2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets. See subparagraph (3) of this paragraph.

(5) *Deductions allowable.* For the allowance of deductions in computing the tax under this paragraph, see paragraph (b) (1) of § 1.873-1.

(6) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), and section 35 (relating to partially tax-exempt interest) shall be allowed against the tax computed in accordance with this paragraph.

(c) *No United States business; gross income of more than $15,400—*(1) *Imposition of tax.* Except as otherwise provided by paragraph (e) of this section and subparagraph (4) of this paragraph, a nonresident alien individual within class 2 is, in accordance with the provisions of section 871 (b), subject to tax under section 1 or, in the alternative, under section 1201 (b) upon the income computed in accordance with this paragraph and received during the taxable year from sources within the United States. In computing the alternative tax under section 1201 (b) for this purpose, all amounts constituting, or considered to be, gains and losses from the sale or exchange of capital assets, whether described in paragraph (b) (3) or (4) of this section, shall be taken into account to the extent prescribed by subparagraphs (2) and (3) of this paragraph.

(2) *Gross income.* For the purposes of subparagraph (1) of this paragraph, the gross income shall include only those items of gains, profits, and income which would be taken into account if the tax were being determined in accordance with paragraph (b) of this section, that is, the gross amount of fixed or determinable annual or periodical income determined in accordance with paragraph (b) (2) of this section, the full amount of any gain taxable in accordance with paragraph (b) (3) of this section, and all other gains (computed without regard to any losses) which are to be taken into account in determining the tax under paragraph (b) (4) of this section. For such purposes, all such gains derived from the sale or exchange of capital assets, whether taken into account under paragraph (b) (3) or (4) of this section, shall be included to the same extent as provided by sections 1201 to 1241, inclusive, and the regulations thereunder.

(3) *Deductions.* In computing, for purposes of subparagraph (1) of this paragraph, the income subject to tax under section 1 or section 1201 (b), there shall be allowed as deductions—

(i) *Capital losses.* Any loss, allocable to sources within the United States, from the sale or exchange of a capital asset which would be taken into account if the tax were being determined in accordance with paragraph (b) (4) of this section, except that such loss shall be allowed only to the extent provided by sections 1201 to 1241, inclusive, and the regulations thereunder, but without the benefit of the capital loss carryover provided by section 1212;

(ii) *Charitable contributions.* The deduction for charitable contributions and gifts to the extent allowed by section 170, whether or not connected with income from sources within the United States, but (in accordance with section 873 (c)) only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States; and

(iii) *Other deductions.* Any other deduction (including the deduction allowed by section 1202 in respect of capital gains) allowed by section 873, but only if, and to the extent that, they are properly allocable to the gross income specified in subparagraph (2) of this paragraph. See also § 1.873-1.

(4) *Minimum tax.* Notwithstanding the provisions of subparagraph (1) of this paragraph, and except as otherwise provided by paragraph (e) of this section, the tax of a nonresident alien individual within class 2 shall in no case be less than 30 percent of the aggregate of the amounts determined under paragraph (b) (2), (3), and (4) of this section and received during the taxable year from sources within the United States.

(5) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 34 (relating to dividends received by individuals), and section 35 (relating to partially tax-exempt interest), shall be allowed against the tax computed in accordance with this paragraph, even though such tax is computed in accordance with subparagraph (4) of this paragraph.

(d) *United States business—*(1) *Imposition of tax.* Except as otherwise provided by paragraph (e) of this section, a nonresident alien individual within class 3 is, in accordance with the provisions of section 871 (c), subject to tax under section 1 or, in the alternative, under section 1201 (b) upon his taxable income.

(2) *Taxable income.* For purposes of this paragraph, the taxable income includes only the taxable income from sources within the United States, determined in accordance with the provisions of sections 63 (a), 861 to 864, inclusive, 872, and 873, and the regulations thereunder.

(3) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 34 (relating to dividends received by individuals), and section 35 (relating to partially tax-exempt interest) shall be allowed against the tax computed in accordance with this paragraph.

(4) *Inapplicable provisions.* The provisions of paragraphs (b) and (c) of this section have no application in determining the tax of a nonresident alien individual engaged in trade or business within the United States.

(e) *Treaty income—*(1) *Definitions.* For purposes of this paragraph, the term "treaty income" shall be construed to mean the gross income of a nonresident alien individual the tax on which is limited by tax convention. Thus, for example, the term would include dividends derived by such an individual from sources within the United States which, in accordance with a tax convention, are subject to United States tax at a rate not to exceed 15 percent. The term "nontreaty income" shall be construed, for such purposes, to mean the gross income of a nonresident alien individual other than treaty income. In either case the gross income shall be determined in accordance with §§ 1.872-1 and 1.872-2, except that the provisions of section 116 shall be disregarded when determining (i) whether the individual is within class 1 or class 2 for the purposes of paragraph (a) of this section, (ii) whether the partial tax under subparagraph (3) (i) of this paragraph shall be computed in accordance with section 871 (a) or (b), and (iii) the tax under subparagraph (3) (ii) of this paragraph upon the separate items of treaty income.

(2) *Application of $15,400 limitation.* Treaty income shall be taken into account in determining whether a nonresident alien individual not engaged in trade or business within the United States at any time during the taxable year is within class 1 or class 2 for the purposes of paragraph (a) of this section; however, the tax upon such income shall be separately computed to the extent required by subparagraph (3) of this paragraph.

(3) *Computation of tax.* If the gross income of a nonresident alien individual within class 1, 2, or 3 consists of both treaty and nontreaty income, the tax liability for the taxable year shall be the sum of the amounts determined in accordance with subdivisions (i) and (ii) of this subparagraph. In no case, however, may the tax liability so determined exceed the tax liability with respect to the taxpayer's entire gross income, determined in accordance with paragraph (b), (c), or (d) of this section as though the tax convention had not come into effect, and without reference to the provisions of this paragraph. This subparagraph shall not be construed to deny the credits provided by sections 31, 32, and 6402.

(i) Compute a partial tax upon only the nontreaty income in accordance with section 871 (a), (b), or (c), whichever applies, as determined under paragraph (b), (c), or (d) of this section, and as though the tax convention had not come into effect. To the extent allowed by such paragraph, the credits allowed by sections 34 and 35 shall then be allowed against the tax so computed but only with respect to items included in the nontreaty income. For this purpose, the nontreaty income alone shall be used as a basis for determining whether the partial tax shall be computed in accordance with section 871 (a) or (b).

(ii) Compute a tax upon the gross amount of each separate item of treaty income at the reduced rate applicable to that item under the tax convention. Notwithstanding any other provision to the contrary, this tax shall be determined without the allowance of any deduction, credit (other than the credits provided by sections 31, 32, and 6402), or exclusion in respect of any item included in the treaty income.

(4) *Illustration.* The application of this paragraph may be illustrated by the following examples:

Example (1). (i) A nonresident alien individual who is a resident of a foreign country with which the United States has entered into a tax convention receives during the taxable year 1955 from sources within the United States total gross income of $125,000, consisting of the following items and computed by taking into account the exclusion granted by section 116 (a):

Oil royalties the tax on which is limited by the convention to a rate not to exceed 15 percent	$100,000
Interest the tax on which is limited by the convention to a rate not to exceed 5 percent	5,000
Dividends the tax on which is not limited by the convention	10,000
Rents the tax on which is not limited by the convention	10,000
Total gross income	125,000

The dividends are assumed to be paid by a domestic corporation not disqualified by section 34 (c) or 116 (b). There are no allowable deductions, other than the deductions allowed by sections 613 and 873 (d). The taxpayer has not engaged in trade or business within the United States or had a permanent establishment therein at any time during the taxable year. Although entitled to do so under the convention, the taxpayer does not elect to be taxed for the taxable year as though he did have a permanent establishment within the United States.

(ii) The tax liability for the taxable year is $21,792, computed as follows:

Nontreaty gross income		$20,000
Less: Deduction for personal exemption		600
Nontreaty taxable income		19,400
Tax computed under section 1 on nontreaty taxable income		6,942
Minimum tax prescribed by section 871 (b) (3) upon nontreaty gross income ($20,000×30 percent)		6,000
Tax for the taxable year upon nontreaty taxable income, as above		6,942
Less: Credit under section 34 in respect of the nontreaty dividends received, that is, the smallest of the following:		
4 percent of the dividends included in nontreaty gross income ($10,000× 4 percent)	$400	
The tax for the taxable year upon nontreaty taxable income, as above	6,942	
4 percent of the nontreaty taxable income for the taxable year ($19,400× 4 percent)	776	
		400
Partial tax computed in accordance with subparagraph (3) (i)		6,542
Plus: Tax on oil royalties ($100,000× 15 percent)		15,000
Tax on interest ($5,000×5 percent)		250
Total		21,792

Example (2). (i) A nonresident alien individual who is a resident of a foreign country with which the United States has entered into a tax convention receives during the taxable year 1955 from sources within the United States total gross income of $4,050, consisting of the following items and computed without regard to the exclusion granted by section 116 (a):

Dividends the tax on which is limited by the convention to a rate not to exceed 15 percent	$3,050
Compensation for personal services, the tax on which is not limited by the convention	1,000
Total gross income	4,050

The dividends are assumed to be paid by a domestic corporation not disqualified by section 34 (c) or 116 (b). The taxpayer was engaged in trade or business within the United States during the taxable year, but did not have a permanent establishment therein. Interest expense in the amount of $2,100 connected with the dividend income was paid by the taxpayer during the taxable year.

(ii) The tax liability for the taxable year is $208, computed as follows:

Total gross income computed by taking into account the exclusion granted by section 116 (a)		$4,000
Less: Deduction for interest expense paid	$2,100	
Deduction for personal exemption	600	
		2,700
Taxable income		1,300
Tax computed under section 1 on taxable income		260
Less: Credit under section 34 in respect of the dividends received, that is, the smallest of the following:		
4 percent of the dividends included in gross income ($3,000×4 percent)	$120	
The tax for the taxable year, as above	260	
4 percent of taxable income for the taxable year ($1,300×4 percent)	52	
		52
Balance		208

Example (3). (i) A nonresident alien individual who is a resident of a foreign country with which the United States has entered into a tax convention receives during the taxable year 1955 from sources within the United States total gross income of $22,000, consisting of the following items:

Compensation for personal services, the tax on which is not limited by the convention	$20,000
Oil royalties the tax on which is limited by the convention to a rate not to exceed 15 percent	2,000
Total gross income	22,000

The taxpayer was engaged in trade or business within the United States during the taxable year but did not have a permanent establishment therein. Although entitled to do so under the convention, the taxpayer does not elect to be taxed for the taxable year as though he did have a permanent establishment within the United States. There are no allowable deductions, other than the deductions allowed by sections 613 and 873 (d).

(ii) The tax liability for the taxable year is $7,242, computed as follows:

Nontreaty gross income	$20,000
Less: Deduction for personal exemption	600
Nontreaty taxable income	19,400
Tax computed under section 1 on nontreaty taxable income	6,942
Plus: Tax on oil royalties ($2,000× 15%	300
Total	7,242

(5) *Exceptions.* This paragraph shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year or to a nonresident alien individual who, in accordance with a tax convention, is entitled, and does elect, to be subject to tax on a net basis as though he were engaged in trade or business within the United States through a permanent establishment situated therein. See §§ 1.873-1 (b) (3) and 1.876-1.

§ 1.871-8 *Definition of engaging in trade or business within the United States*—(a) *Personal services.* As used in sections 861 to 864, inclusive, 871, 881, 882, and 1441 to 1465, inclusive, and the regulations thereunder, the term "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services, (1) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or (2) for an office or place of business maintained by a domestic corporation in a foreign country or in a possession of the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000. See section 7701 (a) (5) and the regulations thereunder for the meaning of "foreign" when applied to a corporation or partnership. As to the source of compensation for personal services, see §§ 1.861-4 and 1.862-1.

(b) *Exchange transactions.* The term "engaged in trade or business within the United States" when used in such sections does not include the effecting of transactions in the United States in stocks or securities through a resident broker, commission agent, or custodian. Nor does it include the effecting of transactions in the United States in commodities (including hedging transactions) through such a person if (1) the goods are of a kind customarily dealt in on an organized commodity exchange, such as a grain futures or a cotton futures market, (2) the transaction is of the kind customarily consummated at such place, and (3) the alien, partnership, or corporation, by whom the transactions are effected, has no office or place of business in the United States at any time during the taxable year through which, or by the direction of which, such transactions in commodities are effected. For this purpose the term "commodities" does not include merchandise in the ordinary channels of commerce. See paragraph (a) (3) of § 1.872-1.

(c) *Trusts.* Neither the beneficiary nor the grantor of a trust, whether revocable or irrevocable, is deemed to be engaged in trade or business within the United States merely because the trustee is engaged in trade or business within the United States.

§ 1.872 *Statutory provisions; gross income.*

SEC. 872. *Gross income*—(a) *General rule.* In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.

(b) *Exclusions.* The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) *Ships under foreign flag.* Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) *Aircraft of foreign registry.* Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

§ 1.872-1 *Gross income of nonresident alien individuals*—(a) *General*—(1) *United States sources.* The gross income of a nonresident alien individual includes only the gross income from sources within the United States. Except as may otherwise be provided by tax convention, the sources of the income for that purpose shall be determined in accordance with the provisions of sections 861 to 864, inclusive, and the regulations thereunder.

(2) *Change of status.* Income received by a resident alien from sources without the United States is taxable although he may become a nonresident alien subsequent to its receipt and before the close of the taxable year. Conversely, income received by a nonresident alien from sources without the United States is not taxable although he may become a resident alien subsequent to its receipt and before the close of the taxable year.

(3) *Exchange transactions.* Even though a nonresident alien individual may not be engaged in trade or business within the United States through the effecting of certain transactions in stocks, securities, or commodities, as described in paragraph (b) of § 1.871-8, nevertheless he shall be required to include in gross income the gains and profits from those transactions to the extent prescribed by § 1.871-7.

(4) *Sales or exchanges of property.* Amounts constituting, or considered to be, gains from the sale or exchange of capital assets, and profits derived from the sale within the United States of personal property, or from the sale of real property located therein, shall also be included in the gross income of a nonresident alien individual to the extent prescribed by § 1.871-7.

(5) *Exclusions.* For exclusions from gross income see § 1.872-2.

(b) *No United States business.* To determine the gross income of a nonresident alien individual who is not engaged in trade or business within the United States at any time during the taxable year, see paragraphs (b) and (c) of § 1.871-7. If that alien is also a bona fide resident of Puerto Rico during the entire taxable year, see § 1.876-1.

(c) *United States business.* To determine the gross income of a nonresident alien individual who at any time within the taxable year is engaged in trade or business within the United States, see paragraph (d) of § 1.871-7. If that alien is also a bona fide resident of Puerto Rico during the entire taxable year, see § 1.876-1.

§ 1.872-2 *Exclusions from gross income of nonresident alien individuals*—(a) *Earnings of foreign ships or aircraft*—(1) *Basic rule.* So much of the income from sources within the United States of a nonresident alien individual as consists of earnings derived from the operation of a ship or ships documented, or of aircraft registered, under the laws of a foreign country which grants an equivalent exemption to citizens of the United States nonresident in that foreign country and to corporations organized in the United States shall not be included in gross income.

(2) *Equivalent exemption*—(i) *Ships.* A foreign country which either imposes no income tax, or, in imposing that tax, exempts from taxation so much of the income of a citizen of the United States nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of a ship or ships documented under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of a foreign ship or ships.

(ii) *Aircraft.* A foreign country which either imposes no income tax, or, in imposing that tax, exempts from taxation so much of the income of a citizen of the United States nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of aircraft registered under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of foreign aircraft.

(b) *Tax conventions.* Income of any kind which is exempt from United States tax under the provisions of a tax convention or treaty to which the United States is a party shall not be included in the gross income of a nonresident alien individual. Income on which the tax is limited by tax convention shall, however, be included in the gross income of such an individual if it is not otherwise excluded from gross income. *See* §§ 1.871-7 (e) and 1.894-1.

(c) *Other exclusions.* Income which is from sources without the United States, as determined under the provisions of sections 861 to 864, inclusive, and the regulations thereunder, or under the provisions of an applicable tax convention, shall not be included in the gross income of a nonresident alien individual. To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Internal Revenue Code of 1954.

§ 1.873 *Statutory provisions; deductions.*

SEC. 873. *Deductions*—(a) *General rule.* In the case of a nonresident alien individual the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in part I, under regulations prescribed by the Secretary or his delegate.

(b) *Losses.* (1) The deduction, for losses not connected with the trade or business if incurred in transactions entered into for profit, allowed by section 165 (c) (2) (relating to losses) shall be allowed whether or not connected with income from sources within the United States, but only if the profit, if such transaction had resulted in a profit, would be taxable under this subtitle.

(2) The deduction for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 165 (c) (3), shall be allowed whether or not connected with income from sources within the United States, but only if the loss is of property within the United States.

(c) *Charitable contributions.* The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income from sources within the United States, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States.

(d) *Personal exemption.* In the case of a nonresident alien individual who is not a resident of a contiguous country, only one exemption under section 151 shall be allowed as a deduction.

(e) *Standard deduction.* For disallowance of standard deduction, see section 142 (b) (1).

§ 1.873-1 *Deductions allowed nonresident alien individuals*—(a) *General provisions*—(1) *Allocation of deductions.* In computing the taxable income of a nonresident alien individual the deductions otherwise allowable shall be allowed only if, and to the extent that, they are connected with income from sources within the United States. No deduction shall be allowed in respect of any item, or portion thereof, which is not connected with income from such sources. For this purpose, the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in sections 861 to 864, inclusive, and the regulations thereunder, execpt as may otherwise be provided by tax convention. Thus, from the items of gross income specifically from sources within the United States and from the items allocated thereto under the provisions of section 863 (a), there shall be deducted (i) the expenses, losses, and other deductions which are connected with those items of income and are properly apportioned or allocated thereto, and (ii) a ratable part of any other expenses, losses, or deductions which are connected with those items of income but cannot definitely be allocated to some item or class of gross income. The ratable part shall be based upon the ratio of gross income from sources within the United States to the total gross income. See §§ 1.861-8 and 1.863-1. In the case of income partly from within and partly from without the United States the expenses, losses, and other deductions connected with income from sources within the United States shall also be deducted in the manner prescribed by §§ 1.863-2 through 1.863-5 in order to ascertain under section 863 the portion of the taxable income attributable to sources within the United States.

(2) *Personal exemptions.* The deductions for the personal exemptions allowed by section 151 or 642 (b) shall not be taken into account for purposes of subparagraph (1) of this paragraph but shall be allowed to the extent provided by paragraphs (b) and (c) of this section.

(3) *Adjusted gross income.* The adjusted gross income of a nonresident alien individual shall be the gross income from sources within the United States, determined in accordance with § 1.871-7, minus the deductions prescribed by section 62 to the extent such deductions are allowed under this section in computing taxable income.

(4) *Standard deduction.* The standard deduction shall not be allowed in computing the taxable income of a nonresident alien individual. See section 142 (b) (1) and the regulations thereunder.

(5) *Exempt income.* No deduction shall be allowed under this section for the amount of any item or part thereof allocable to a class or classes of exempt income, including income exempt by tax convention. See section 265 and the regulations thereunder.

(b) *No United States business*—(1) *Income of not more than $15,400*—(i) *Deduction for losses only.* A nonresident alien individual within class 1 shall not be allowed any deductions other than the deduction for losses from sales or exchanges of capital assets determined in the manner prescribed by paragraph (b) (4) (vii) of § 1.871-7. Thus, an individual within this class shall not be allowed any deductions for the personal exemptions otherwise allowed by section 151 or 642 (b).

(ii) *Source of losses.* Notwithstanding the provisions of section 873 (b) (1), losses from sales or exchanges of capital assets shall be allowed under this subparagraph only if allocable to sources within the United States. See paragraph (b) (4) (i) of § 1.871-7.

(2) *Aggregate more than $15,400*—(i) *Deductions allowed.* In computing the income subject to tax under section 1 or section 1201 (b), a nonresident alien individual within class 2 shall be allowed deductions to the extent prescribed by paragraph (c) (3) of § 1.871-7, but subject to the limitations of this section. For this purpose, the deduction for the personal exemptions shall be allowed in accordance with subdivision (iii) of this subparagraph.

(ii) *Deductions disallowed.* In computing the minimum tax prescribed by section 871 (b) (3), that individual shall not be allowed any deductions other than the deduction for losses from sales or exchanges of capital assets determined in the manner precribed by paragraph (b) (4) (vii) of § 1.871-7. For this purpose, the deductions for the personal exemptions shall not be allowed. See paragraph (c) (4) of § 1.871-7.

(iii) *Personal exemptions.* When the deductions for personal exemptions are allowed under this subparagraph, only one exemption under section 151 shall be allowed in the case of an individual who is not a resident of Canada or Mexico. A resident of either of those countries shall be allowed all the exemptions granted by section 151 to the extent prescribed therein. An estate or trust, whether or not a resident of Canada or Mexico, shall determine its deduction for the personal exemption in accordance with section 642 (b) and the regulations thereunder.

(iv) *Source of losses.* Notwithstanding the provisions of section 873 (b), losses from sales or exchanges of capital assets shall be allowed under this subparagraph only if allocable to sources within the United States. See paragraph (c) (3) (i) of § 1.871-7.

(3) *Election to be taxed on a net basis.* Notwithstanding the other provisions of this paragraph, a nonresident alien individual within class 1 or 2 shall be allowed the deductions allowed by paragraph (c) of this section, if pursuant to a tax convention he is entitled, and does elect, to be subject to United States tax on a net basis as though he were engaged in trade or business within the United States through a permanent establishment situated therein.

(c) *United States business*—(1) *Deductions in general.* For purposes of computing the income subject to tax, a nonresident alien individual within class 3 shall be allowed deductions to the extent prescribed by paragraph (d) of § 1.871-7, but subject to the limitations of this section. For this purpose, the deductions for the personal exemptions shall be allowed in accordance with subparagraph (3) of this paragraph.

(2) *Special deductions.* Notwithstanding the rule of source prescribed in paragraph (a) of this section, an individual within class 3 shall be allowed the following deductions whether or not they are connected with income from sources within the United States:

(i) *Losses on transactions for profit.* Any loss sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with a trade or business, shall be allowed to the extent allowed by section 165 (c) (2), but only if and to the extent that the profit, if the transaction had resulted in a profit, would be taxable to such individual. Losses allowed under this subdivision shall be deducted in full, as provided in §§ 1.861-8 and 1.863-1, when the profit from the transaction, if it had resulted in a profit, would, under the provisions of section 861 (a) or 863 (a), have been taxable in full as income from sources within the United States; but shall be deducted under the provisions of § 1.863-3 when the profit from the transaction, if it had resulted in profit, would have been taxable only in part.

(ii) *Casualty losses.* Any loss of property not connected with a trade or business, sustained during the taxable year and not compensated for by insurance or otherwise, if the loss arises from fire, storm, shipwreck, or other casualty, or from theft, shall be allowed to the extent allowed by section 165 (c) (3), but only if the loss is of property within the United States. Losses allowed under this subdivision shall be deducted in full, as provided in §§ 1.861-8 and 1.863-1, from the items of gross income specified under sections 861 (a) and 863 (a) as being derived in full from sources within the United States; but, if greater than the sum of those items, the unabsorbed loss shall be deducted from the income apportioned under the provisions of § 1.863-3 to sources within the United States.

(iii) *Charitable contributions.* The deduction for charitable contributions and gifts, to the extent allowed by section 170, shall be allowed under this subparagraph, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States.

(3) *Personal exemptions.* Only one exemption under section 151 shall be allowed in the case of an individual who is not a resident of Canada or Mexico. A resident of either of those countries shall be allowed all the exemptions granted by section 151 to the extent prescribed therein. An estate or trust, whether or not a resident of Canada or Mexico, shall determine its deduction for the personal exemption in accordance with section 642 (b) and the regulations thereunder.

§ 1.874 *Statutory provisions; allowance of deductions and credits.*

SEC. 874. *Allowance of deductions and credits*—(a) *Return prerequisite to allowance.* A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 32 for tax withheld at the source.

(b) *Tax withheld at source.* The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary or his delegate, and under regulations prescribed by the Secretary or his delegate, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) *Foreign tax credit not allowed.* A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

§ 1.874-1 *Allowance of deductions and credits to nonresident alien individuals*—(a) *Return required.* A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him with respect to the income tax, only if he files or causes to be filed with the district director (or, if applicable, with the Director of International Operations), in accordance with section 6012 and the regulations thereunder, a true and accurate return of his total income received from all sources within the United States. This paragraph shall not be construed, however, to deny the credits provided by sections 31 and 32.

(b) *Tax on gross income.* If a return is not so filed, the tax shall be collected on the basis of gross income, determined in accordance with § 1.871-7 but without regard to any deductions otherwise allowable, and the only credits allowable against the tax so computed shall be those allowed by sections 31 and 32. This paragraph shall apply even though the tax determined in accordance with § 1.871-7 has been fully satisfied at the source. See also § 1.872-1.

(c) *Return by district director.* If a nonresident alien individual has various sources of income within the United States, so that from any one source, or from all sources combined, the amount of income shall call for the assessment of a tax greater than that withheld at the source in the case of that individual, and a return of income has not been filed by him or on his behalf, the district director (or, if applicable, the Director of International Operations) shall (1) cause a return of income to be made, (2) include therein the income described in § 1.871-7 of that individual from all sources concerning which he has information, and (3) assess the tax and collect it from one or more of those sources of income within the United States, without allowance for deductions or credits (other than the credits provided by sections 31 and 32).

(d) *Alien resident of Puerto Rico.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See § 1.876-1.

§ 1.875 *Statutory provisions; partnerships.*

SEC. 875. *Partnerships.* For purposes of this subtitle, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged.

§ 1.875-1 *Partnerships.* Whether a nonresident alien individual who is a member of a partnership is taxable in accordance with subsection (a), (b), or (c) of section 871 may depend on the status of the partnership. A nonresident alien individual who is a member of a partnership which is not engaged in trade or business within the United States is subject to the provisions of section 871 (a) or (b), as the case may be, depending on whether or not he receives during the taxable year an aggregate of more than $15,400 gross income described in section 871 (a), if he is not otherwise engaged in trade or business within the United States. A nonresident alien individual who is a member of a partnership which at any time within the taxable year is engaged in trade or business within the United States is considered as being engaged in trade or business within the United States and is therefore taxable under section 871 (c). For definition of what the term "partnership" includes, see section 7701 (a) (2) and the regulations thereunder. The test of whether a partnership is engaged in trade or business within the United States is the same as in the case of a nonresident alien individual. See § 1.871-8.

§ 1.876 *Statutory provisions; alien residents of Puerto Rico.*

SEC. 876. *Alien residents of Puerto Rico*—(a) *No application to certain alien residents of Puerto Rico.* This subpart shall not apply to an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, and such alien shall be subject to the tax imposed by section 1.

(b) *Cross reference.* For exclusion from gross income of income derived from sources within Puerto Rico, see section 933.

§ 1.876-1 *Alien residents of Puerto Rico*—(a) *General.* A nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, in accordance with the provisions of section 876, subject to tax under section 1 or, in the alternative, under section 1201 (b) in generally the same manner as in the case of an alien resident of the United States. See §§ 1.1-1 (b) and 1.871-1. The tax is imposed upon the taxable income of such a resident of Puerto Rico, determined in accordance with section 63 (a) and the regulations thereunder, from sources both within and without the United States, except that under the provisions of section 933 income derived from sources within Puerto Rico (other than amounts received for services performed as an employee of the United States or any agency thereof) is excluded from gross income. For determining the form of return to be used by such an individual, see section 6012 and the regulations thereunder.

(b) *Exceptions.* Though subject to the tax imposed by section 1, a nonresident alien individual who is a bona fide resident of Puerto Rico during his entire taxable year shall nevertheless be treated as a nonresident alien for the purpose of many provisions of the Internal Revenue Code of 1954 relating to nonresident alien individuals. Thus, for example, such a resident of Puerto Rico is not allowed to compute his tax in accordance with the optional tax table (section 4 (d) (1)); is not allowed the standard deduction (section 142 (b) (1)); is not allowed a deduction for a "dependent" who is a resident of Puerto Rico unless the dependent is a citizen of the United States (section 152 (b) (3)); is subject to withholding of tax at source under chapter 3 (sections 1441 (d) and 1451 (e)); is generally not subject to the collection of income tax at source on wages (section 3401 (a) (6)); is not allowed to make a joint return or a joint declaration of estimated tax (sections 6013 (a) (1) and 6015 (b)); must pay his estimated tax on or before the 15th day of the fourth month of the taxable year (sections 6015 (a), 6073 (a), and 6153 (a) (1)); and must pay his income tax on or before the 15th day of the sixth month following the close of the taxable year (sections 6072 (c) and 6151 (a)).

(c) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 33 (relating to taxes of foreign countries), section 34 (relating to dividends received by individuals), and section 35 (relating to partially tax-exempt interest) shall be allowed against the tax computed in accordance with this section. No credit shall be allowed under section 37 in respect of retirement income.

§ 1.877 *Statutory provisions; certain foreign exempt organizations.*

SEC. 877. *Foreign educational, charitable, and certain other exempt organizations.* For special provisions relating to unrelated business income of foreign educational, charitable, and other exempt trusts, see section 512 (a).

Foreign Corporations

§ 1.881 *Statutory provisions; tax on foreign corporations not engaged in business in the United States.*

SEC. 881. *Tax on foreign corporations not engaged in business in United States*—(a) *Imposition of tax.* In the case of every foreign corporation not engaged in trade or business within the United States, there is hereby imposed for each taxable year, in lieu of the taxes imposed by section 11, a tax of 30 percent of the amount received from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (including amounts described in section 631 (b) and (c) which are considerd to be gains from the sale or exchange of capital assets).

(b) *Doubling of tax.* For doubling of tax on corporations of certain foreign countries, see section 891.

§ 1.881-1 *Taxation of foreign corporations*—(a) *Classes of foreign corporations.* For purposes of the income tax, foreign corporations are divided into two classes, namely, nonresident foreign corporations and resident foreign corporations. A nonresident foreign corporation is a foreign corporation which is not engaged in trade or business within the United States at any time during the taxable year. A resident foreign corporation is a foreign corporation which, at some time during the taxable year, is engaged in trade or business within the United States. See also section 7701 and the regulations thereunder.

(b) *Manner of taxing.* A foreign corporation, whether resident or nonresident, is taxable only on income derived from sources within the United States, to the extent indicated in § 1.881-2 or § 1.882-1.

(c) *Meaning of terms.* For the meaning of the term "engaged in trade or business within the United States", as used in this section, see § 1.871-8. For the definition of the term "foreign corporation", see section 7701 (a) (3) and (5), and the regulations thereunder.

(d) *Corporations included as foreign.* The following corporations shall be included as foreign corporations for purposes of this section:

(1) A foreign life insurance company not carrying on an insurance business within the United States, as described in section 816 (b) (section 807 (b) in the case of taxable years beginning before January 1, 1955);

(2) A foreign mutual insurance company (other than a life or marine insurance company or a fire insurance

company subject to the tax imposed by section 831) not carrying on an insurance business within the United States, as described in section 821 (d); and

(3) A foreign insurance company (other than a life or mutual insurance company), a foreign mutual marine insurance company, and a foreign mutual fire insurance company, not carrying on an insurance business within the United States, as described in section 831 (b).

(e) *Other provisions applicable to foreign corporations*—(1) *Insurance companies.* For the taxation of foreign insurance companies carrying on an insurance business within the United States, see sections 816 (a) (section 807 (a) in the case of taxable years beginning before January 1, 1955), 822 (e), and 832 (d), and the regulations thereunder.

(2) *Accumulated earnings tax.* For the imposition of the accumulated earnings tax upon the accumulated taxable income of a foreign corporation, whether resident or nonresident, formed or availed of for tax avoidance purposes, see section 532 and the regulations thereunder.

(3) *Personal holding company tax.* For the imposition of the personal holding company tax upon the undistributed personal holding company income of a foreign corporation, whether resident or nonresident, see sections 541 and 545, and the regulations thereunder.

(4) *Foreign personal holding companies.* For the mandatory inclusion in the gross income of the United States shareholders of the undistributed foreign personal holding company income of a foreign personal holding company, see section 551 and the regulations thereunder.

§ 1.881-2 *Tax on nonresident foreign corporations*—(a) *Imposition of tax.* Except as otherwise provided by paragraph (f) of this section, a nonresident foreign corporation is not subject to the tax imposed by section 11 or 1201 (a) but, pursuant to the provisions of section 881 (a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under paragraphs (b) and (c) of this section and received during the taxable year from sources within the United States. For this purpose the source of the income shall be determined in accordance with the provisions of § 1.882-2. For the purposes of section 881 (a), "amount received" means "gross income".

(b) *Fixed or determinable annual or periodical income.* The tax of 30 percent applies to the gross amount received as fixed or determinable annual or periodical gains, profits, and income. Specific items of fixed or determinable annual or periodical income are enumerated in section 881 (a) as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments, but other fixed or determinable annual or periodical gains, profits, and income are also subject to the tax as, for instance, royalties. As to the determination of fixed or determinable annual or periodical income, see paragraph (a) of § 1.1441-2. For special rules treating gain on the disposition of section 306 stock as fixed or determinable annual or periodical income, see section 306 (f) and the regulations thereunder.

(c) *Amounts considered to be capital gains.* The tax of 30 percent also applies, pursuant to the provisions of section 881 (a), to amounts received during the taxable year from sources within the United States which are described in section 631 (b) and (c) and are considered to be gains from the sale or exchange of capital assets. Thus, the tax applies to gain recognized under specified circumstances on the disposal of timber and coal and considered in accordance with section 1231 to be gain from the sale or exchange of a capital asset.

(d) *Losses and other deductions.* In computing the income subject to tax under this section no deduction shall be allowed for any loss sustained during the taxable year, even though the loss is taken into account under section 1231 in determining whether the gain is considered to be gain from the sale or exchange of a capital asset. For the general disallowance of deductions in computing the tax under this section, see paragraph (a) (1) of § 1.882-3.

(e) *Credit against tax.* The credit allowed by section 32 (relating to tax withheld at source on foreign corporations) shall be allowed against the tax computed in accordance with this section.

(f) *Treaty income.* If the gross income of a nonresident foreign corporation consists of both treaty and nontreaty income, the tax liability for the taxable year shall be determined in a manner consistent with that prescribed by paragraph (e) of § 1.871-7 in the case of a nonresident alien individual.

§ 1.882 *Statutory provisions; tax on resident foreign corporations.*

SEC. 882. *Tax on resident foreign corporations*—(a) *Imposition of tax.* A foreign corporation engaged in trade or business within the United States shall be taxable as provided in section 11.

(b) *Gross income.* In the case of a foreign corporation, gross income includes only the gross income from sources within the United States.

(c) *Allowance of deductions and credits*—(1) *Deductions allowed only if return filed.* A foreign corporation shall receive the benefit of the deductions allowed to it in this subtitle only by filing or causing to be filed with the Secretary or his delegate a true and accurate return of its total income received from all sources in the United States, in the manner prescribed in subtitle F, including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions.

(2) *Allocation of deductions.* In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in part I, under regulations prescribed by the Secretary or his delegate.

(3) *Charitable contributions.* The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income from sources within the United States.

(4) *Foreign tax credit.* Foreign corporations shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(d) *Returns of tax by agent.* If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

§ 1.882-1 *Tax on resident foreign corporations*—(a) *General*—(1) *Imposition of tax.* Except as otherwise provided by subparagraph (7) of this paragraph, a resident foreign corporation is, in accordance with section 882 (a), subject to tax as prescribed by paragraphs (b) and (c) of this section or, in the alternative, to the tax imposed by section 1201 (a).

(2) *Taxable income.* For purposes of this section, the taxable income of a resident foreign corporation includes only the taxable income from sources within the United States, determined in accordance with the provisions of sections 63 (a), 861 to 864, inclusive, 882, and 883, and the regulations thereunder.

(3) *Credit against tax.* The credit allowed by section 32 (relating to tax withheld at source on foreign corporations) shall be allowed against the tax computed in accordance with this section.

(4) *Changes in tax rate.* For provisions respecting the effect of any change in rate of tax during the taxable year, see section 21 and the regulations thereunder.

(5) *Declarations of estimated tax.* Every foreign corporation which for its taxable year expects to be subject to tax under this section shall make a declaration of estimated tax in accordance with the provisions of section 6016 and the regulations thereunder.

(6) *Consolidated returns.* Except in the case of certain corporations organized under the laws of Canada or Mexico and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, a foreign corporation is not an includible corporation for purposes of the privilege of making a consolidated return by an affiliated group of corporations. See § 1.1502-2 (b) (1) and (3).

(7) *Treaty income.* If the gross income of a resident foreign corporation consists of both treaty and nontreaty income, the tax liability for the taxable year shall be determined in a manner consistent with that prescribed by paragraph (e) of § 1.871-7 in the case of a nonresident alien individual.

(b) *Normal tax.* A resident foreign corporation is liable to the normal tax imposed by section 11 (b). See that section and the regulations thereunder.

(c) *Surtax.* A resident foreign corporation is also liable to the surtax imposed by section 11 (c). See that section and the regulations thereunder.

§ 1.882-2 *Gross income of foreign corporations*—(a) *United States sources.* The gross income of a foreign corporation, whether resident or nonresident, includes only the gross income from sources within the United States. Except as may otherwise be provided by tax convention, the sources of the income for that purpose shall be determined in accordance with the provisions of sections 861 to 864, inclusive, and the regulations thereunder.

(b) *Nonresident foreign corporations.* The gross income of a nonresident foreign corporation consists only of the items of income specified in section 881 (a) and described in § 1.881-2.

(c) *Resident foreign corporations*—(1) *Gross income not limited to specified items.* The gross income of a resident foreign corporation is not limited to the items of income specified in section 881 (a) but includes every item of gross income which, in accordance with paragraph (a) of this section, is treated as gross income from sources within the United States. See also paragraph (a) (2) of § 1.882-1.

(2) *Income from sale of property.* The gross income of a resident foreign corporation shall, subject to the provisions of paragraph (a) of this section, include gains derived from the sale or exchange of capital assets, gains from hedging transactions, and profits derived from the sale within the United States of personal property or from the sale of real property located therein.

(3) *Exchange transactions.* Even though a foreign corporation may not be engaged in trade or business within the United States through the effecting of certain transactions in stocks, securities, or commodities, as described in paragraph (b) of § 1.871-8, nevertheless, it shall, subject to the provisions of paragraph (a) of this section, be required to include in gross income the gains and profits from those transactions if at any time during the taxable year it has otherwise engaged in trade or business within the United States.

(d) *Exclusions.* For exclusions from gross income see § 1.883-1.

§ 1.882-3 *Deductions allowed foreign corporations*—(a) *Nonresident foreign corporations*—(1) *General.* For purposes of computing the tax imposed by section 881 (a) and described in § 1.881-2, a nonresident foreign corporation shall not be allowed any deductions, since the tax is imposed upon the gross amount received from sources within the United States.

(2) *Election to be taxed on a net basis.* Notwithstanding the provisions of subparagraph (1) of this paragraph, a nonresident foreign corporation shall be allowed the deductions allowed by paragraph (b) of this section, if pursuant to a tax convention it is entitled, and does elect, to be subject to United States tax on a net basis as though it were engaged in trade or business within the United States through a permanent establishment situated therein.

(b) *Resident foreign corporations*—(1) *General.* For purposes of computing the income subject to tax, a resident foreign corporation shall be allowed deductions to the extent prescribed by paragraph (a) (2) of § 1.882-1, but subject to the limitations of this paragraph.

(2) *Allocation of deductions.* In computing the taxable income of a resident foreign corporation the deductions otherwise allowable shall be allowed only if, and to the extent that, they are connected with income from sources within the United States. For this purpose, the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined in the same manner as provided in paragraph (a) (1) of § 1.873-1 with respect to nonresident alien individuals.

(3) *Special deductions.* The special deductions allowed by section 241 (relating to the deductions for partially tax-exempt interest, dividends received, etc.) in the case of a corporation shall be taken into account for purposes of subparagraph (2) of this paragraph. Thus, these deductions shall be allowed only in respect of amounts included in gross income pursuant to § 1.882-2.

(4) *Exempt income.* No deduction shall be allowed under this paragraph for the amount of any item or part thereof allocable to a class or classes of exempt income, including income exempt by tax convention. See section 265 and the regulations thereunder.

(5) *Charitable contributions.* Notwithstanding the rule of source prescribed in subparagraph (2) of this paragraph, a resident foreign corporation shall be allowed the deduction for charitable contributions and gifts, to the extent allowed by section 170, whether or not the deduction is connected with income from sources within the United States.

§ 1.882-4 *Allowance of deductions to foreign corporations*—(a) *Nonresident foreign corporations.* As indicated in § 1.882-3, a nonresident foreign corporation is not allowed any deductions, whether or not a return of income is filed. The deductions allowed such a corporation electing under a tax convention to be subject to tax on a net basis shall be obtained by filing a return of income in the manner prescribed in the regulations under the tax convention. See paragraph (a) (2) of § 1.882-3.

(b) *Resident foreign corporations*—(1) *Return necessary.* A resident foreign corporation shall receive the benefit of the deductions allowed to it with respect to the income tax, only if it files or causes to be filed with the district director, in accordance with section 6012 and the regulations thereunder, a true and accurate return of its total income received from all sources within the United States.

(2) *Tax on gross income.* If a return is not so filed, the tax shall be collected on the basis of gross income, determined in accordance with § 1.882-1 but without regard to any deductions otherwise allowable.

(3) *Return by district director.* If a resident foreign corporation has various sources of income within the United States and a return of income has not been filed by it or on its behalf, the district director shall (i) cause a return of income to be made, (ii) include therein the income described in § 1.882-1 of that corporation from all sources concerning which he has information, and (iii) assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions.

§ 1.883 *Statutory provisions; exclusions from gross income.*

SEC. 883. *Exclusions from gross income.* The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) *Ships under foreign flag.* Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) *Aircraft of foreign registry.* Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

§ 1.883-1 *Exclusions from gross income of foreign corporations*—(a) *Earnings of foreign ships or aircraft*—(1) *Basic rule.* So much of the income from sources within the United States of a foreign corporation as consists of earnings derived from the operation of a ship or ships documented, or of aircraft registered, under the laws of a foreign country which grants an equivalent exemption to citizens of the United States nonresident in that foreign country and to corporations organized in the United States shall not be included in gross income.

(2) *Equivalent exemption*—(i) *Ships.* A foreign country which either imposes no income tax, or, in imposing that tax, exempts from taxation so much of the income of a citizen of the United States nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of a ship or ships documented under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of a foreign ship or ships.

(ii) *Aircraft.* A foreign country which either imposes no income tax, or, in imposing that tax, exempts from taxation so much of the income of a citizen of the United States nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of aircraft registered under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of foreign aircraft.

(b) *Tax conventions.* Income of any kind which is exempt from United States tax under the provisions of a tax convention or treaty to which the United States is a party shall not be included in the gross income of a foreign corporation. Income on which the tax is limited by tax convention shall, however, be included in the gross income of such a corporation if it is not otherwise excluded from gross income. See §§ 1.881-2 (f), 1.882-1 (a) (7), and 1.894-1.

(c) *Other exclusions.* Income which is from sources without the United States, as determined under the provisions of sections 861 to 864, inclusive, and the regulations thereunder, or under the provisions of an applicable tax convention, shall not be included in the gross income of a foreign corporation. To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Internal Revenue Code of 1954.

§ 1.884 *Statutory provisions; cross references.*

Sec. 884. *Cross references.* (1) For withholding at source of tax on income of foreign corporations, see section 1442.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 871 (c).

(3) For special provisions relating to foreign insurance companies, see subchapter L (sec. 801 and following).

(4) For special provisions relating to unrelated business income of foreign educational, charitable, and certain other exempt organizations, see section 512 (a).

Miscellaneous Provisions

§ 1.891 *Statutory provisions; doubling of rates of tax on citizens and corporations of certain foreign countries.*

Sec. 891. *Doubling of rates of tax on citizens and corporations of certain foreign countries.* Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 802, 811, 821, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

[Sec. 891 as amended in respect of taxable years beginning after December 31, 1954, by sec. 5 (6), Life Insurance Company Tax Act for 1955]

§ 1.892 *Statutory provisions; income of foreign governments and of international organizations.*

Sec. 892. *Income of foreign governments and of international organizations.* The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

§ 1.892-1 *Income of foreign governments and international organizations*—(a) *Foreign governments.* The exemption of the income of foreign governments applies also to their political subdivisions. Any income collected by foreign governments from investments in the United States in stocks, bonds, or other domestic securities which are not actually owned by, but are loaned to, such foreign governments is subject to tax.

(b) *International organizations*—(1) *Exempt from tax.* Subject to the provisions of section 1 of the International Organizations Immunities Act (the provisions of which section are set forth in paragraph (b) (3) of § 1.893-1), the income of an international organization (as defined in section 7701 (a) (18)) received from investments in the United States in stocks, bonds, or other domestic securities, owned by such international organization, or from interest on deposits in banks in the United States of moneys belonging to such international organization, or from any other source within the United States, is exempt from Federal income tax.

(2) *Income received prior to Presidential designation.* An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exemption with respect to income of the prescribed character received by such organization prior to the date of the issuance of such Executive order, if (i) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such income is received.

§ 1.893 *Statutory provisions; compensation of employees of foreign governments or international organizations.*

Sec. 893. *Compensation of employees of foreign governments or international organizations*—(a) *Rule for exclusion.* Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) Such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) In the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) In the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) *Certificate by Secretary of State.* The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

§ 1.893-1 *Compensation of employees of foreign governments or international organizations*—(a) *Employees of foreign governments*—(1) *Exempt from tax.* Except to the extent that the exemption is limited by the execution and filing of the waiver provided for in section 247 (b) of the Immigration and Nationality Act, all employees of a foreign government (including consular or other officers, or nondiplomatic representatives) who are not citizens of the United States, or are citizens of the Republic of the Philippines (whether or not citizens of the United States), are exempt from Federal income tax with respect to wages, fees, or salaries received by them as compensation for official services rendered to such foreign government, provided (i) the services are of a character similar to those performed by employees of the Government of the United States in that foreign country and (ii) the foreign government whose employees are claiming exemption grants an equivalent exemption to employees of the Government of the United States performing similar services in that foreign country.

(2) *Certificate by Secretary of State.* Section 893 (b) provides that the Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(3) *Items not exempt.* The income received by employees of foreign governments from sources other than their salaries, fees, or wages, referred to in subparagraph (1) of this paragraph, is subject to Federal income tax.

(4) *Immigration and Nationality Act.* Section 247 (b) of the Immigration and Nationality Act provides as follows:

(b) The adjustment of status required by subsection (a) [of section 247 of the Immigration and Nationality Act] shall not be applicable in the case of any alien who requests that he be permitted to retain his status as an immigrant and who, in such form as the Attorney General may require, executes and files with the Attorney General a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order which would otherwise accrue to him because of the acquisition of an occupational status entitling him to a nonimmigrant status under paragraph (15) (A), (15) (E), or (15) (G) of section 101 (a).

(5) *Effect of waiver.* An employee of a foreign government who executes and files with the Attorney General the waiver provided for in section 247 (b) of the Immigration and Nationality Act thereby waives the exemption conferred by section 893 of the Internal Revenue Code of 1954. As a consequence, that exemption does not apply to income re-

ceived by that alien after the date of filing of the waiver.

(6) *Citizens of the United States.* The compensation of citizens of the United States (other than those who are also citizens of the Republic of the Philippines) who are officers or employees of a foreign government is not exempt from income tax pursuant to this paragraph. But see section 911 and the regulations thereunder.

(b) *Employees of international organizations*—(1) *Exempt from tax.* Except to the extent that the exemption is limited by the execution and filing of the waiver provided for in section 247 (b) of the Immigration and Nationality Act and subject to the provisions of sections 1, 8, and 9 of the International Organizations Immunities Act, wages, fees, or salary of any officer or employee of an international organization (as defined in section 7701 (a) (18)) received as compensation for official services to that international organization is exempt from Federal income tax, if that officer or employee (i) is not a citizen of the United States or (ii) is a citizen of the Republic of the Philippines (whether or not a citizen of the United States).

(2) *Income earned prior to executive action.* An individual of the prescribed class who receives wages, fees, or salary as compensation for official services to an organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act and who has been duly notified to, and accepted by, the Secretary of State as an officer or employee of that organization, or who has been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective officer or employee of that organization, may enjoy the benefits of the exemption with respect to compensation of the prescribed character earned by that individual, either prior to the date of the issuance of the Executive order, or prior to the date of the acceptance or designation by the Secretary of State, for official services to that organization, if (i) the Executive order does not provide otherwise, (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time the compensation is earned, and (iii) the individual is an officer or employee of that organization at that time.

(3) *International Organizations Immunities Act.* Sections 1, 8, and 9 of the International Organizations Immunities Act provide in part as follows:

SECTION 1. For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

* * * * *

SEC. 8. (a) No person shall be entitled to the benefits of this title [International Organizations Immunities Act] unless he (1) shall have been duly notified to and accepted by the Secretary of State as a * * * officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective * * * officer, or employee; * * *.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this title is not desirable, he shall so inform the * * * international organization concerned * * *, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this title, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

SEC. 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees * * * provided for in this title [International Organizations Immunities Act], shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided*, That nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

(4) *Effect of waiver.* An officer or employee of an international organization who executes and files with the Attorney General the waiver provided for in section 247 (b) of the Immigration and Nationality Act thereby waives the exemption conferred by section 893 of the Internal Revenue Code of 1954. As a consequence, that exemption does not apply to income received by that individual after the date of filing of the waiver.

(5) *Citizens of the United States.* The compensation of citizens of the United States (other than those who are also citizens of the Republic of the Philippines) who are officers or employees of an international organization is not exempt from income tax pursuant to this paragraph. But see section 911 and the regulations thereunder.

(c) *Tax conventions, consular conventions, and international agreements*—(1) *Exemption dependent upon internal revenue laws.* A tax convention or consular convention between the United States and a foreign country, which provides that the United States may include in the tax base of its residents all income taxable under the internal revenue laws, and which makes no specific exception for the income of the employees of that foreign government, does not provide any exemption (with respect to residents of the United States) beyond that which is provided by the internal revenue laws. Accordingly, the effect of the execution and filing of a waiver under section 247 (b) of the Immigration and Nationality Act by an employee of a foreign government which is a party to such a convention is to subject the employee to tax to the same extent as provided in paragraph (a) (5) of this section with respect to the waiver of exemption under section 893.

(2) *Exemption not dependent upon internal revenue laws.* If a tax convention, consular convention, or international agreement provides that compensation paid by the foreign government or international organization to its employees is exempt from Federal income tax, and the application of this exemption is not dependent upon the provisions of the internal revenue laws, the exemption so conferred is not affected by the execution and filing of a waiver under section 247 (b) of the Immigration and Nationality Act. For examples of exemptions which are not affected by the Immigration and Nationality Act, see article X of the income tax convention between the United States and the United Kingdom (60 Stat. 1383); article IX, section 9 (b), of the Articles of Agreement of the International Monetary Fund (60 Stat. 1414); and article VII, section 9 (b), of the Articles of Agreement of the International Bank for Reconstruction and Development (60 Stat. 1458).

§ 1.894 *Statutory provisions; income exempt under treaty.*

SEC. 894. *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

§ 1.894-1 *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from income tax. A tax convention shall be considered as a treaty for this purpose. See § 1.871-7 (e), 1.881-2 (f), or 1.882-1 (a) (7) for the manner of computing the tax liability of a nonresident alien individual or foreign corporation whose gross income includes income on which the tax is limited by tax convention.

NOTE: The provisions of § 1.6012, and §§ 1.6012-7 to 1.6012-9, inclusive, as contained in the appendix attached to the notice of proposed rule making which was published in the FEDERAL REGISTER on May 1, 1956, will be incorporated in substance in a later Treasury decision prescribing regulations under the administrative provisions applicable to the income tax.

All regulations inconsistent herewith are modified accordingly.

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: October 16, 1957.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 57-8760; Filed, Oct. 23, 1957; 8:49 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 12106; FCC 57-1146]

[Rules Amdt. 3-98]

PART 3—RADIO BROADCAST SERVICES

TELEVISION BROADCAST STATIONS (BRAINERD-FAIRMONT-MANKATO, MINN.; ESTHERVILLE, IOWA)

In the matter of amendment of § 3.606, *Table of assignments*, Television Broadcast Stations. (Brainerd-Fairmont-Mankato, Minn., Estherville, Iowa); Docket No. 12106.

1. The Commission has before it for consideration the conflicting proposals set out in its Notice of Proposed Rule Making (FCC 57-786), released July 19, 1957, in this proceeding, (1) to assign Channel 12 to Mankato, Minnesota, by substituting Channel 37 for Channel 12 at Brainerd, Minnesota; (2) to assign Channel 12 to either Fairmont, Minnesota, by changing the offset carrier requirements for Channel 12 at Brainerd and Ironwood, Michigan; or (3) to Estherville, Iowa, without any other changes in the Table of Assignments, in response to petitions filed respectively by KNUJ, Inc., Minnowa Broadcasting Co. and Lee Radio, Inc.

2. Comments and reply comments were filed by the petitioners named above and by Northwest Television Company and Brainerd Broadcasting Company. Comments were also filed by the Brainerd Chamber of Commerce, the Brainerd Junior Chamber of Commerce, the Mayor of Brainerd and Fairmont Broadcasting Corporation.

3. In support of its proposal to assign Channel 12 to Mankato by deleting the channel from Brainerd, KNUJ urges that Mankato, with a 1950 population of 18,809, is larger and economically more important that Brainerd, Fairmont and Estherville, and that Channel 12 at Mankato would comply with all technical requirements and would provide a first local television service to an area where its potential for public service would be greater than that in these smaller communities. KNUJ also urges that the use of Channel 12 at Mankato should take precedence over its retention at Brainerd since no applications have been filed for its use in that community. KNUJ states that if the channel is assigned to Mankato, it will file an application for its use.

4. In support of its proposal to assign Channel 12 to Fairmont, Minnowa Broadcasting Co. submits that the television stations nearest to Fairmont are the VHF stations located at Austin, Minnesota and Mason City, Iowa, both of which are approximately 75 miles from Fairmont; that Fairmont is not within the Grade B service area of any television station; and that the use of Channel 12 at Fairmont would provide the community with its first local television outlet and the surrounding area with its first satisfactory television service. Minnowa contends that a Channel 12 station in Fairmont, operating with an effective radiated power of 25 dbk and an antenna height of 1,000 feet, would provide Grade A television service to an area of 6,500 square miles with a population of 203,038 persons, and Grade B service to an area of 12,670 square miles with a population of 414,091 persons; that a "white area" of 6,940 square miles containing 229,636 persons would receive a first Grade B service; and that only 80 square miles of the total Grade A service area of a Channel 12 station at Fairmont would be within the Grade A service area of an existing station. Minnowa urges that Fairmont, with a 1950 population of 8,193, and the county seat of Martin County with a 1950 population of 25,655, could provide the nucleus of support for a television station and that the assignment could be made in full compliance with the Rules without any other changes in the Table of Assignments. It states that it intends to apply for use of Channel 12 at Fairmont if the channel is allocated to that community. Fairmont Broadcasting Corporation, licensee of Radio Station KSUM at Fairmont, also states that it will file an application for the use of Channel 12 in the event it is assigned to Fairmont.

5. In opposition to the conflicting proposal of KNUJ for Mankato, Minnowa contends that the use of Channel 12 at Mankato would afford a first Grade B or better service to only 5,330 square miles and 182,597 persons, or 47,039 fewer persons than would receive a first television service from Channel 12 at Fairmont, and that, accordingly, assignment of the channel to Fairmont would better serve the Commission's objective of providing at least one television service to all parts of the country. Minnowa also argues that the allocation of Channel 12 to Mankato would require the deletion of the channel from Brainerd, whereas the channel can be utilized at Fairmont without disturbing the Brainerd assignment; that Brainerd had a 1950 population of 12,637; and that Channel 12 at Brainerd would bring a Grade A service to 6,500 square miles and 120,529 persons and a Grade B television service to 12,670 square miles and 267,498 persons and would provide a first Grade B or better service to a "white area" of 10,210 square miles with a population of 224,181 persons; and that the allocation of Channel 12 to Fairmont and its retention at Brainerd, would provide two important communities with local television outlets and would bring a first television service to a total of 453,817 persons, while its assignment to Mankato would provide a local outlet to only one community and a first television service to only 182,597 persons. With respect to the proposed assignment of Channel 12 to Estherville, Minnowa contends that the allocation of Channel 12 to Estherville, a community with a 1950 population of only 6,719 persons, would provide a first Grade B or better service to an area of 5,760 square miles and a population of 165,498 persons, or 1,180 square miles and 64,138 persons less than would its allocation to Fairmont.

6. Lee Radio, Inc., requests the assignment of Channel 12 to Estherville and Fairmont on a hyphenated basis. Lee Radio argues that a station using an Estherville-Fairmont Channel 12 allocation could be located to provide city-grade service to both communities; that a Channel 12 station at Mankato would embrace Fairmont but not Estherville within its Grade B contour, while an Estherville-Fairmont station, operating with power of 316 kw and an antenna height of 1,000 feet, would provide Mankato with Grade B service. Lee Radio alleges that an Estherville-Fairmont station would provide Grade B service to a "white area" of 6,618 square miles with a population of 205,730; that a Mankato station would serve a white area of 5,145 square miles with a population of 180,730 with a Grade B signal and that an Estherville-Fairmont station would include within its Grade B contour more than two-thirds of the white area which would be within the Grade B contour of a Mankato station. It submits that Channel 12 stations in both Brainerd and Fairmont-Estherville would include within their Grade B contours a total population of 437,346 not now within the Grade B contour of any authorized station, or 256,616 more persons than would be included within the Grade B contour of a Mankato station. Lee Radio states that in the event Channel 12 is allocated to Estherville-Brainerd, it will either apply for, or be a party to, an application for use of the channel.

7. In reply, KNUJ contends that the data furnished by Minnowa and Lee Radio as to the population and area that would be served by a Channel 12 station at Mankato are not truly indicative since all calculations made by these parties were based on the assumption that the transmitter site of a Mankato station would be located in the center of Mankato. KNUJ maintains that if the transmitter site of a Channel 12 station at Mankato is located southwest of the city in the center of the general area where it could be located in accordance with technical requirements, a Channel 12 station, operating with power of 316 kw at antenna height of 1,000 feet, would provide city-grade service to Mankato, Fairmont and Estherville, would serve an area of 12,690 square miles containing a population of 440,204 within its Grade B contour; and would provide a first Grade B service to a "white area" of 6,730 square miles containing a population of 252,292. It adds that the area and population data submitted relating to the "white area" which would be

served by a Brainerd station do not reflect pending applications for stations at both Bemidji and St. Cloud, nor the proposed substitution of a UHF channel for Channel 12 at Brainerd.

8. Northwest Television Company, operator of UHF station KQTV in Fort Dodge, Iowa, urges that if any of the instant proposals are to be adopted it should be the proposal to assign Channel 12 to Mankato rather than those proposing the allocation of the channel to either Estherville or Fairmont or to both communities on a hyphenated basis. Northwest states that it has operated Station KQTV on Channel 21 at Fort Dodge, Iowa, since November of 1953; that Station KQTV is the only UHF station in operation in either Iowa or Minnesota; that the contours of VHF stations at Des Moines, Iowa, and at Ames, Iowa, penetrate the southern and eastern portions of KQTV's service area and that the VHF station at Mason City, Iowa, penetrates its service area on the north and east, leaving only the area served by KQTV to the north and west in the direction of Estherville and Fairmont free of VHF service; and that a station on Channel 12 at either Estherville or Fairmont would almost completely cover this UHF area with a VHF signal. It urges that the area northwest of Fort Dodge is a UHF island; that there are no VHF channels assigned to the area; and that operation of UHF stations on the UHF channels assigned to Estherville and Fairmont could provide a satisfactory service to this area without serious competition from outside VHF signals. Northwest urges that a VHF station operating in either of these cities would invade the UHF service area of its Fort Dodge station; would make effective competition impossible, and would result in the failure of the only UHF station operating in Iowa. In addition, Northwest contends that since the combined population of Estherville and Fairmont is only 14,912, it is questionable whether these communities could support a regular VHF operation; that the population comparisons between Fairmont and Estherville-Fairmont and a Mankato allocation submitted by both Lee Radio and Minnowa Broadcasting were based on facilities utilizing maximum power and antenna height of 1,000 feet and cannot be considered a reliable indication of coverage of a Channel 12 station at Fairmont or Estherville-Fairmont since the use of such facilities in cities of this size is doubtful; and that, on the basis of size alone, the larger city of Mankato should be preferred since it would meet an existing need and provide a greater opportunity for economic success. Northwest urges that since it is in a VHF fringe area, if Mankato is ever to have a local outlet it will have to be VHF but that a VHF allocation to either Estherville or Fairmont would create a channel intermixture situation in a predominantly UHF area.

9. In reply, Minnowa and Lee Radio argue that Northwest Television's opposition to their proposals for the use of Channel 12 at Fairmont and Estherville is merely an attempt to avoid competition in a portion of the present service area of its UHF station at Fort Dodge at the expense of depriving a substantial population in the Fairmont and Estherville area of a first and only television service; that it has failed to support its objective with any factual information; and that the assignment of Channel 12 to Estherville or Fairmont does not involve any threat to the existence of UHF Station KQTV at Fort Dodge. Lee Radio states that the Grade A overlap of a station on Channel 12 at Estherville and Station KQTV at Fort Dodge would be an area of about 7.5 square miles with a population of 116, and that the Grade B overlap would be an area of about 1,632 square miles containing a population of 31,046.

10. The Brainerd Broadcasting Company, the Mayor of Brainerd, the Brainerd Chamber of Commerce and the Brainerd Junior Chamber of Commerce oppose the deletion of Channel 12 from Brainerd. They urge that there is a need and demand for the use of Channel 12 in Brainerd to provide a local outlet for serving a significant number of people. Brainerd Broadcasting Company submits that there are no existing television stations within 100 miles of Brainerd, whereas Mankato is located in the fringe area of several stations. It states that it intends to file an application for a television station on Channel 12 within the next six months.

11. We have carefully examined the comments and the various proposals for the allocation of Channel 12, and we believe that the public interest would best be served by assigning the channel to the larger community of Mankato. While it was proposed that Channel 12 be deleted from Brainerd in order to permit its assignment to Mankato, we believe the channel may be utilized in both Mankato and Brainerd by judicious selection of transmitter sites meeting the separation and coverage requirements of the Rules. In view of the need and demand indicated in the comments for its use in both communities, we believe that Channel 12 should not be deleted from Brainerd and should be made available for use in both communities and that applicants for use of the channel in Brainerd and Mankato should specify transmitter sites which would not preclude its use in the other community. Mankato is larger than either Fairmont or Estherville and the two communities combined, and we believe that the assignment of a first VHF channel to Mankato rather than to either or both of these smaller communities would make possible a more effective use of the channel. Moreover, the computations made by the parties indicate that both Fairmont and Estherville would receive Grade A or better service from a Channel 12 station at Mankato and that substantially the same number of persons would receive a first service from the use of Channel 12 at Mankato in an area south of the city as would receive a first service from its use in the Fairmont and Estherville area.

12. Authority for the adoption of the amendment herein is contained in sections 4 (i), 301, 303 (c), (d), (f), (r) and 307 (b) of the Communications Act, as amended.

13. In view of the foregoing, *It is ordered*, That effective November 20, 1957, the Table of Assignments, contained in § 3.606 of the Commission's rules and regulations, is amended, insofar as the communities named are concerned, as follows:

a. Amend the Table under the State of Minnesota, as follows:

City	*Channel No.*
Mankato	12, 15−

b. Change the offset carrier requirement only for Channel 12 in Brainerd, Minnesota, from 12 even to 12 minus.

c. Change the offset carrier requirement only for Channel 12 in Ironwood, Michigan, from 12 minus to 12 plus.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies secs. 301, 303, 307, 48 Stat. 1081, 1082, 1083; 47 U. S. C. 301, 303, 307)

Adopted: October 16, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8761; Filed, Oct. 23, 1957; 8:49 a. m.]

[Rules Amdt. 14-4]

PART 14—PUBLIC FIXED STATIONS AND STATIONS OF THE MARITIME SERVICES IN ALASKA

LOCATION CHANGE OF NAME IN ALASKAN COMMUNICATIONS SYSTEM

In the matter of amendment of §§ 14.206 (a) and 14.260 (a) of the Commission's rules and regulations to effect certain editorial changes therein.

The Commission having under consideration the desirability of making certain editorial changes in §§ 14.206 and 14.260 of its rules and regulations; and

It appearing that the amendments adopted herein are editorial in nature, and, therefore, prior publication of Notice of Proposed Rule Making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendments may become effective immediately; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4 (i), 5 (d) (1) and 303 (r) of the Communications Act of 1934, as amended, and section 0.341 (a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This sixteenth day of October 1957, that effective October 23, 1957, Part 14 is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U. S. C. 303, 155)

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Having been advised that the Alaska Communications System changed the name of the location of its facilities from "Naknek" to "King Salmon", the Commission is amending Part 14 of its Rules to reflect such change; further, since ACS radio station ALB-44 at Petersburg, Territory of Alaska, no longer maintains service to Alaska-public fixed stations, the table in § 14.260 (a) is also amended to reflect the deletion of Petersburg.

1. Section 14.206 (a) (2) is amended by changing "Naknek" to "King Salmon". As amended, subparagraph (2) reads as follows:

(2) 1666 for telegraphy only; normally for communication with ACS stations located at Ketchikan and King Salmon. The use of this frequency shall be coordinated as necessary with use of the frequency 1660 kc by other fixed stations in the Alaska area so as to avoid harmful interference.

NOTE: The frequency 1666 kc may be used also for transmission by ACS fixed stations to public fixed stations.

2. Section 14.206 (a) (4) is amended to delete "Naknek" and insert "King Salmon" therefor. As amended, subparagraph (4) reads as follows:

(4) 2466 for telegraphy and/or telephony; normally for communication with ACS stations located at Wrangell, King Salmon, and Kotzebue. The use of this frequency shall be coordinated as necessary with use of the frequencies 2450 kc, 2474 kc, and 2482 kc by other stations in the Alaska area so as to avoid harmful interference.

3. In the table in § 14.260 (a) "Naknek" is changed to "King Salmon" and "Petersburg" is deleted therefrom. As amended, the table reads as follows:

ACS coast station location:	*Respective transmitting frequency* [*kc*]
Anchorage	2312
Barrow	2312
Cold Bay	2312
Cordova	2300
Craig	2312
Juneau	2784
Ketchikan	2300
Kodiak	2784
King Salmon	2312
Nome	2784
Seward	2312
Sitka	2312
Skagway	2312
Unalaska	2312
Valdez	2300
Whittier	2312
Wrangell	2312

[F. R. Doc. 57-8762; Filed, Oct. 23, 1957; 8:49 a. m.]

[Docket No. 12136; FCC 57-1151]

[Rules Amdt. 16-20]

PART 16—LAND TRANSPORTATION RADIO SERVICES

LICENSING OF SPEED MEASURING DEVICES

In the matter of amendment of Part 16 of the Commission's Rules to provide for the licensing of Speed Measuring Devices in the Land Transportation Radio Services; Docket No. 12136.

1. On August 6, 1957, the Commission released a Notice of Proposed Rule Making, which was published in the FEDERAL REGISTER of August 10, 1957 (22 F. R. 6433) in accordance with the provisions of section 4 (a) of the Administrative Procedure Act, proposing to amend Part 16 of its Rules to provide for the licensing of Land Radiopositioning Stations and Mobile Radiopositioning Stations for the operation of speed measuring devices utilizing continuous wave (CW) emissions, in the various Land Transportation Radio Services, on the frequencies 2455 and 10525 Mc.

2. The period in which interested persons were afforded an opportunity to submit comments thereon has expired. The only comments received on the proposed amendments were submitted by the Association of American Railroads. While the AAR supports the proposed rule making, it suggests that provisions should be made for regular rather than developmental operation of speed measuring devices in the Land Transportation Radio Services or, in the alternative, that Land and Mobile Radiopositioning Stations be exempted from the provisions of certain sections of the rules governing stations in those services.

3. Pending the outcome of the proceedings it is conducting in the matter of allocation of frequencies in the bands above 890 Mc (Docket No. 11866), the Commission does not deem it advisable to remove the developmental classification of the frequencies in that portion of the spectrum. Therefore, that request of the AAR is denied at this time. As to the alternative request of the AAR, the Commission is of the opinion that some of the exemptions requested are too broad in scope and at the same time that the AAR overlooked some other necessary exemptions. Accordingly, the Commission accepts its suggestion in part and the proposed amendments are modified herewith to include the exemption of speed measuring devices from the normal provisions of Part 16 of the Commission's Rules with respect to (1) coordination of frequency selection, (2) modulation standards, (3) measurements of modulation, (4) station control points, (5) transmission time, (6) station identification, (7) operators for normal operation, (8) developmental showings and (9) developmental reports, as specifically provided below.

4. Accordingly, *It is ordered*, That effective November 15, 1957, Part 16 of the Commission's Rules is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Adopted: October 16, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

1. Amend § 16.6 by the addition of the following new paragraphs:

(z) [Reserved.]

(aa) *Land radiopositioning station*. A station in the radiolocation service, other than a radionavigation station, not intended for operation while in motion.

(bb) *Mobile radiopositioning station*. A station in the radiolocation service, other than a radionavigation station, intended to be used while in motion or during halts at unspecified points.

2. Insert a new § 16.258 in Subpart F (Motor Carrier Radio Service), to read as follows:

§ 16.258 *Speed measuring devices*. (a) The frequencies 2455 and 10525 Mc are available for assignment under the terms of a developmental grant to Land Radiopositioning Stations and Mobile Radiopositioning Stations in this service for use by speed measuring devices only: *Provided*, That unmodulated continuous wave (CW) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. The use of the frequency 2455 Mc is subject to the condition that harmful interference will not be caused to stations in the fixed and mobile services, and is further subject to no protection from interference which may be experienced from the operation of industrial, scientific and medical devices on the frequency 2450 Mc.

(b) Pending further development of the Commission's microwave program and the establishment of technical standards to govern the operation of transmitting equipment to be utilized by speed measuring devices, stations licensed under the provisions of this section shall be exempt from the requirements of §§ 16.9, 16.105, 16.107 (c), 16.108 (c), 16.151 (d), 16.152 (a), 16.154 (e), 16.202, and 16.208.

3. Insert a new § 16.358 in Subpart H (Railroad Radio Service), to read as follows:

§ 16.358 *Speed measuring devices*. (a) The frequencies 2455 and 10525 Mc are available for assignment under the terms of a developmental grant to Land Radiopositioning Stations and Mobile Radiopositioning Stations in this service for use by speed measuring devices only: *Provided*, That unmodulated continuous wave (CW) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. The use of the frequency 2455 Mc is subject to the conditions that harmful interference will not be caused to stations in the fixed and mobile services, and is further subject to no protection from interference which may be experienced from the operation of industrial, scientific and medical devices on the frequency 2450 Mc.

(b) Pending further development of the Commission's microwave program and the establishment of technical standards to govern the operation of transmitting equipment to be utilized by speed measuring devices, stations licensed under the provisions of this section shall be exempt from the requirements of §§ 16.9, 16.105, 16.107 (c), 16.108 (c), 16.151 (d), 16.152 (a), 16.154 (e), 16.202, and 16.208.

4. Insert a new § 16.405 in Subpart I (Taxicab Radio Service), to read as follows:

§ 16.405 *Speed measuring devices.* (a) The frequencies 2455 and 10525 Mc are available for assignment under the terms of a developmental grant to Land Radiopositioning Stations and Mobile Radiopositioning Stations in this service for use by speed measuring devices only: *Provided,* That unmodulated continuous wave (CW) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. The use of the frequency 2455 Mc is subject to the condition that harmful interference will not be caused to stations in the fixed and mobile services, and is further subject to no protection from interference which may be experienced from the operation of industrial, scientific and medical devices on the frequency 2450 Mc.

(b) Pending further development of the Commission's microwave program and the establishment of technical standards to govern the operation of transmitting equipment to be utilized by speed measuring devices, stations licensed under the provisions of this section shall be exempt from the requirements of §§ 16.9, 16.105, 16.107 (c), 16.108 (c), 16.151 (d), 16.152 (a), 16.154 (e), 16.202, and 16.208.

5. Insert a new § 16.505 in Subpart K (Automobile Emergency Radio Service), to read as follows:

§ 16.505 *Speed measuring devices.* (a) The frequencies 2455 and 10525 Mc are available for assignment under the terms of a developmental grant to Land Radiopositioning Stations and Mobile Radiopositioning Stations in this service for use by speed measuring devices only: *Provided,* That unmodulated continuous wave (CW) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. The use of the frequency 2455 Mc is subject to the condition that harmful interference will not be caused to stations in the fixed and mobile services, and is further subject to no protection from interference which may be experienced from the operation of industrial, scientific and medical devices on the frequency 2450 Mc.

(b) Pending further development of the Commission's microwave program and the establishment of technical standards to govern the operation of transmitting equipment to be utilized by speed measuring devices, stations licensed under the provisions of this section shall be exempt from the requirements of §§ 16.9, 16.105, 16.107 (c), 16.108 (c), 16.151 (d), 16.152 (a), 16.154 (e), 16.202, and 16.208.

[F. R. Doc. 57-8763; Filed, Oct. 23, 1957; 8:49 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 110—DESTRUCTION OF RECORDS

SUBPART A—RAILROAD COMPANIES

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 15th day of October A. D. 1957.

The matter of regulations to govern the destruction of railroad records being under consideration pursuant to provisions of section 20 (7) (b) of the Interstate Commerce Act, as amended (34 Stat. 594, 35 Stat. 648, 54 Stat. 918; 49 U. S. C. 20); and

It appearing that provisions of an order entered August 21, 1957 prescribing the Regulations to Govern the Destruction of Records of Railroad Companies—Issue of 1957, as they relate to records and documents listed hereinafter, are more restrictive than necessary for proper administration of part I of the act; relaxing which restrictions would be permissive in nature and therefore not subject to the public rule making requirements of section 4 (a) of the Administrative Procedure Act; and otherwise good cause appearing;

It is ordered, That the following items be, and they hereby are, deleted from the list in § 110.3 (a) (2) of the regulations and inserted in their proper numerical order in the corresponding list in § 110.3 (a) (3):

Item	
51 (a)	Original payrolls and summaries.
55 (b)	Paid drafts, paid checks, and receipts for cash paid out.
55 (c)	Paid and canceled vouchers, audit office copies of vouchers, and supporting papers.

It is further ordered, That in all other respects the order entered August 21, 1957, shall remain in full force and effect as therein ordered;

And it is further ordered, That this modifying order shall be served on all carriers by railroad which are subject to provisions of the said order entered August 21, 1957, and that notice of this modifying order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12)

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 57-8747; Filed, Oct. 23, 1957; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 929]

[Docket No. AO-260-A3]

MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Drake Hotel, Watertown, South Dakota, beginning at 10:00 a. m., on December 4, 1957, with respect to the proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Eastern South Dakota marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposal relative to enlargement of the marketing area raises the issue whether applicable provisions of the present order would tend to effectuate the declared policy of the Act as applied to the proposed marketing area and, if not, what modifications of the provisions of the order would be applicable.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Aberdeen Milk Producers Association, Aberdeen, South Dakota; Beadle County Cooperative Milk Producers Association, Huron, South Dakota; Spink County Cooperative Milk Producers Association, Redfield, South Dakota; and Watertown Cooperative Milk Association, Watertown, South Dakota:

1. Amend § 929.6 to read as follows:

§ 929.6 *Eastern South Dakota Marketing Area.* "Eastern South Dakota Marketing Area" hereinafter called the "marketing area", means all the territory within the corporate limits of the cities of Aberdeen, Huron, Pierre, Redfield, Watertown, and Webster, all in the State of South Dakota.

2. Amend § 929.7 to read as follows:

§ 929.7 *Pool plant.* "Pool plant" means (a) A distributing plant from which a volume of Class I milk equal to not less than 50 percent of the Grade A milk received at such plant from diary farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than an average of 750 pounds per day or not less than 5 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of Class I milk or milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers durir g such month: *Provided*, That if such shipments are not less than 60 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

3. Delete § 929.8.

4. Amend § 929.10 to read as follows:

§ 929.10 *Handler*. "Handler" means: (a) Any person in his capacity as the operator of one or more distributing or supply plants, or (b) any cooperative association with respect to the milk from producers diverted by the association for the account of such association from a pool plant to a nonpool plant.

5. Add the following definitions of "distributing plant" and "supply plant."

§ 929.17 *Distributing plant*. "Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any Class I product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 929.18 *Supply plant*. "Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 929.7 (a).

6. Add the following definitions of "base milk" and "excess milk".

§ 929.19 *Base milk*. "Base milk" means the amount of milk received by a handler from a producer during each of the months of January through June which is not in excess of such producer's daily base computed pursuant to § 929.88 multiplied by the number of days in such month on which milk was received by the handler: *Provided*, That with respect to any producer on "every-other-day" delivery to a pool plant the days of non-delivery shall be considered as days of delivery for the purposes of this section and § 929.88.

§ 929.20 *Excess milk*. "Excess milk" means the amount of milk received by a handler from a producer during each of the months of January through June which is in excess of base milk received from such producer during such month.

7. Insert a new section as follows, to be designated as § 929.62.

§ 929.62 *Handlers operating nonpool plants*. None of the provisions from §§ 929.43 through 929.53, or from §§ 929.70 through 929.84, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 12th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 929.63.

8. Insert a new section as follows, to be designated as § 929.63.

§ 929.63 *Rate of payment on unpriced milk*. The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of March through June, subtract from the Class I price the Class II price; and

(b) During the months of July through February subtract from the Class I price the weighted average value per hundredweight of all producer milk.

9. Amend § 929.70 to read as follows:

§ 929.70 *Computation of value of milk*. The value of milk received during each month by each handler from producers shall be a sum of money computed by the market administrator by multiplying the pounds of such milk in each class by the applicable class prices specified in § 929.51, as adjusted pursuant to § 929.52 and adding any amounts computed pursuant to paragraphs (a) and (b) of this section. (a) If a handler had overage of either skim milk or butterfat, an amount computed by multiplying the pounds of overage by the applicable class prices; and (b) An amount obtained by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by (1) the hundredweight of producer milk classified in Class II, less shrinkage, in the preceding month, or (2) the hundredweight of milk subtracted from Class I pursuant to § 929.46 (a) (3) and (b), whichever is less; and (c) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 929.46 (a) (2), and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 929.63.

10. Substitute the following section for the present § 929.71.

§ 929.71 *Computation of aggregate value used to determine uniform prices*. For each month the market administrator shall compute an aggregate value from which to determine uniform prices per hundredweight for producer milk of 3.5 percent butterfat content, as follows:

(a) Combine into one total the values computed pursuant to § 929.70 for all handlers who made the reports prescribed in § 929.30 for such month, except those in default of payments required pursuant to § 929.83 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk; and

(c) Add an amount equal to not less than one-half of the unobligated cash balance in the producer-settlement fund.

11. Amend present § 929.71 to read as follows and designate it as § 929.72.

§ 929.72 *Computation of uniform price*. For each of the months of July through December the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat received from producers as follows:

(a) Divide the aggregate value computed pursuant to § 929.71 by the total hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The result shall be known as the "uniform price" for milk received from producers.

12. Add a new section as follows, to be designated as § 929.73.

§ 929.73 *Computation of price for base milk*. For each of the months of January through June the market administrator shall compute a price per hundredweight for base milk and for excess milk of 3.5 percent butterfat received from producers as follows:

(a) From the reports submitted by handlers pursuant to § 929.30, determine the aggregate classification of producer milk included in the computation of value pursuant to § 929.71 and the total hundredweight of such milk which is base milk and which is excess milk;

(b) Compute the total value of such excess milk on a 3.5 percent butterfat basis by multiplying the hundredweight of such milk not in excess of the total quantity of Class II milk pursuant to paragraph (a) of this section by the price for Class II milk of 3.5 percent butterfat content, and by adding thereto the value obtained by multiplying the hundredweight of such milk in excess of the total hundredweight of such Class

II milk by the price for Class I milk of 3.5 percent butterfat content;

(c) Divide the total value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat received from producers at pool plants;

(d) Subtract the value of excess milk obtained in paragraph (b) of this section from the aggregate value of milk computed pursuant to § 929.71 and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk included in these computations; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers at pool plants.

13. Add a new section as follows, to be designated as § 929.74.

§ 929.74 *Notification of handlers.* On or before the 10th day of each month the market administrator shall notify each handler of:

(a) The amount and value of his milk in each class computed pursuant to §§ 929.45 and 929.70 and the totals of such amounts and values;

(b) The uniform price computed pursuant to § 929.72 or the price for base milk and excess milk computed pursuant to § 929.73 whichever is applicable;

(c) The amount, if any, due such handler from the producer-settlement fund;

(d) The total amounts to be paid by such handler pursuant to §§ 929.80 and 929.83; and

(e) The amount to be paid by such handler pursuant to § 929.86.

14. Amend § 929.81 to read as follows:

§ 929.81 *Butterfat differential to producers.* The applicable uniform prices to be paid each producer pursuant to § 929.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 929.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

15. Insert new sections as follows, to be designated as §§ 929.82, 929.83, and 929.84.

§ 929.82 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 929.83 and 929.85 and out of which he shall make all payments to handlers pursuant to §§ 929.84 and 929.85: *Provided,* That the market administrator shall offset any payment due any handler against payments due from such handler.

§ 929.83 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month (a) each handler shall pay to the market administrator for payment to producers through the producer-settlement fund the amount, if any, by which the total value computed for him pursuant to § 929.70 for such month is greater than the sum required to be paid to producers by such handler pursuant to § 929.80.

§ 929.84 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler, for payment to producers, the amount, if any, by which the sum required to be paid by such handler pursuant to § 929.80 is greater than the total value computed for him pursuant to § 929.70.

16. Amend § 929.82 as follows, and designate it as § 929.85. Renumber current §§ 929.83 and 929.84 to conform to the changes recommended in proposals 15 and 16.

§ 929.85 *Adjustment of accounts.* Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund pursuant to §§ 929.83 and 929.84, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 929.80 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

17. Add two new sections as follows, to be designated as §§ 929.88 and 929.89.

§ 929.88 *Determination of daily base.* The daily base of each producer which shall be applicable during the months of January through June, shall be determined by the market administrator as follows:

(a) For each producer from whom milk was received by a handler(s) at a pool plant on at least 120 days during the immediately preceding months of August through December, the daily base shall be computed by dividing such producer's total deliveries of milk to a handler(s) during such five-month period by the number of days on which milk was received from such producer: *Provided,* That any producer for whom a daily base has been computed may relinquish his daily base computed pursuant to this paragraph and be allotted a daily base computed pursuant to paragraph (b) of this section upon written notice to the market administrator prior to January 31, of each year; and

(b) Any producer who has not established a daily base pursuant to the provisions of paragraph (a) of this section or one who elects to relinquish his daily base under such paragraph shall be assigned a daily base for each of the months of January through June, computed as follows:

(1) From the total quantity of producer milk received by all handlers during the month subtract the total receipts from producers who did not establish daily bases or who have relinquished them;

(2) Determine the percentage that total base deliveries were of the remaining pounds of producer milk; and

(3) Multiply the resulting percentage by 0.80 and then by the total pounds of milk received by a handler from the producer during such delivery period and divide the result by the number of days on which such milk was received.

§ 929.89 *Base rules.* The following rules shall apply in connection with the establishment of bases:

(a) A base shall apply to deliveries of milk by the producers for whose account that milk was delivered during the months of August through December; and

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable upon receipt of such application signed by all joint holders.

18. Amend § 929.22 (j) (2) by changing "the 8th day" to "the 10th day."

19. Amend the order by making such other changes as may be necessary to effectuate the above-described proposed amendments.

Proposed by the Eastern South Dakota Dairy Processor's Association composed of Equity Union Creamery, Aberdeen, South Dakota; Lacy Ice Cream Company, Aberdeen, South Dakota; Franklyn Dairy, Aberdeen, South Dakota; DeVries Dairy, Aberdeen, South Dakota; Spink County Dairy, Redfield, South Dakota; Oviatt Dairy, Huron, South Dakota; Rogers Dairy, Watertown, South Dakota; and Jorgenson Dairy, Watertown, South Dakota:

20. Amend § 929.6 to read as follows:

§ 929.6 *Eastern South Dakota marketing area.* "Eastern South Dakota marketing area", hereinafter called the "marketing area," means all the territory within the counties of Beadle, Brown, Codington, Day, Hughes and Spink, all in the State of South Dakota.

21. Provide that handlers pay producers 46 cents per hundredweight less

for all milk sold out of the marketing area.

22. Amend § 929.7 (a) to read as follows:

(a) "Pool plant" means any plant from which any volume of Class I milk is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

23. Amend § 929.8 to read as follows:

§ 929.8 *Approved plant.* "Approved Plant" means a pool plant or any plant from which Class I milk is delivered (including delivery by a vendor or sale from a plant store) during the month to retail or wholesale outlets (except pool plants) and a producer-handler selling Class I milk direct to the consumer or on the open market located in the marketing area.

24. Amend § 929.15 to read as follows:

§ 929.15 *Producer-handler.* "Producer-handler" means any person who produces milk and who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers, except that any such person selling Class I milk direct to the consumer or on the open market shall be prohibited from establishing a base under this subpart.

25. Amend § 929.46 (a) (1) and (2) to read as follows:

(a) (1) Subtract from total pounds of Class I milk the pounds of skim milk in other source of milk.

(2) Subtract from the remaining pounds of skim milk in Class I the pounds of skim in producers milk, provided that if the receipts of the skim milk in producer milk is greater than remaining pounds of skim milk in Class I milk the balance shall be allocated as Class II milk.

26. Amend § 929.83 to provide that the expense of administration shall be paid by each handler but shall not exceed 3 cents per hundredweight each month.

27. Delete § 929.50 (a).

Proposed by Tyler's Dairy, Pierre, South Dakota and Crescent Dairy, Webster, South Dakota.

28. No expansion of Federal Order No. 29, Eastern South Dakota Milk Marketing Area, be made at this time.

29. Federal Order No. 29, Eastern South Dakota Milk Marketing Area, be amended to allow 5,000 pounds of milk daily to be admitted to the milk marketing area without coming under regulations of Federal Order No. 29.

30. The present Class I prices of Federal Order No. 29 be reduced by 23 cents per hundredweight.

Copies of this notice of hearing may be procured from the Market Administrator, 423½ S. Phillips Avenue, Sioux Falls, South Dakota, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: October 18, 1957.

[SEAL] F. R. BURKE,
Acting Deputy Administrator.

[F. R. Doc. 57-8752; Filed, Oct. 23, 1957; 8:48 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 9]

[Docket No. 11513 etc.; FCC 57-1148]

AVIATION SERVICES

FURTHER NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Parts 6 and 9 of the Commission's Rules and Regulations to require the use of single sideband transmission in fixed radiotelephone service below 25,000 kc, except Alaskan and maritime fixed; Docket No. 11513; and in the matter of amendment of Part 9 of the Commission's Rules to require the use of single sideband transmission in the aeronautical mobile service for radiotelephony on frequencies below 25,000 kc.; Docket No. 11678; and in the matter of amendment of Parts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, and 19 of the Commission's Rules concerning type acceptance of transmitters, bandwidth and spurious emissions; Docket No. 11654.

1. Further notice is hereby given of proposed rule making in the above-entitled matters insofar as Part 9 of the rules is concerned.

2. In the original Notices of Proposed Rule Making in Dockets 11513 and 11678, the Commission invited comments in the matter of amendment of its Rules to require the use of single sideband transmission by stations operating on frequencies below 25,000 kc in the aeronautical mobile service, and in the fixed radiotelephone service, except Alaskan and martime fixed. Comments were requested on technical criteria and on factors involved in the scheduling of a possible compulsory conversion program from conventional double sideband to single sideband operation.

3. In the original Notice of Proposed Rule Making in Docket 11654, the Commission invited comments relative to proposed amendments of various parts of its Rules to change the requirements concerning measurement of occupied bandwidths and spurious emissions of transmitters for type acceptance purposes.

4. Based on the comments received in these Dockets, and other information which has subsequently become available, the Commission now proposes amendment of Part 9 to incorporate specific technical standards to govern single sideband operation. The subject matter of Docket No. 11654, to the extent applicable to the Aviation Services, is being included in this proceeding because amendment of Part 9 of the Rules to provide for single sideband operation necessitates a change in the requirements for attenuation of spurious emissions.

5. Owing to the present unavailability of commercial airborne single sideband equipment, the Commission is not now proposing a schedule for compulsory conversion to single sideband operation. It is proposed at this time only to specify applicable technical standards for voluntary single sideband operation in the Aviation Services.

6. While it is the Commission's intention to encourage continuing development of single sideband operating techniques, it is necessary to insure (1) compatibility with double sideband equipment on existing channels during any transition period, and (2) realization of maximum frequency spectrum utilization. Compatibility with existing double sideband equipment can be achieved through operation in the full-carrier mode of single sideband, and it appears that maximum frequency utilization may be realized through ultimate adoption of the suppressed carrier mode of single sideband operation. Accordingly, both full carrier and suppressed carrier operating capabilities are proposed as requirements for type acceptance of single sideband transmitting equipment. This is not intended to prohibit operation in other modes of single sideband; it is intended only to preclude the use of large amounts of equipment which may eventually prove unsuitable for integration into the ultimate single sideband system.

7. The Commission is aware that general agreement does not exist among the interested parties as to the ultimate mode of single sideband operation in the Aviation Services. Although the suppressed carrier mode is proposed in this proceeding, comments are specifically invited from proponents of other modes or systems of operation as to the relative merits of the various operating techniques, together with recommended technical standards.

8. The matter of a possible conversion program to compulsory single sideband operation will be considered again at a later date when development and implementation have progressed sufficiently to enable the Commission to accumulate more detailed data on equipment and systems performance under normal operating conditions.

9. The proposed amendment is issued under the authority of section 303 (e), (f), and (r) of the Communications Act of 1934, as amended.

10. Any interested person who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before February 3, 1958, written data, views, or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Rebuttal comments may be filed within 10 days from the last day for filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this mat-

ter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

11. In accordance with the provisions of § 1.764 of the Commission's rules, an original and 20 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: October 16, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

1. Add a new paragraph (c) to § 9.178 to read as follows:

(c) The frequency coinciding with the center of an authorized bandwidth of emission shall be specified as the assigned frequency; for single sideband emission, the carrier frequency shall also be specified.

2. Delete paragraph (b) of § 9.179 and substitute a new paragraph (b) to read as follows:

(b) Except as indicated in (c) below, the power authorized for use at any station shall be specified in terms of peak power at the transmitter output terminals. Peak power is defined as the mean power during one radio frequency cycle at the highest crest of the modulation envelope.

3. Delete paragraph (c) of § 9.179 and insert new paragraphs (c) and (d) to read as follows:

(c) For stations using amplitude modulated emission and transmitting both sidebands and a full carrier, authorized power will be specified in terms of unmodulated radio frequency carrier power at the transmitter output terminals.

(d) Power may be determined either by direct measurement or by multiplying the plate input power to the final amplifier by an appropriate factor.

4. Delete paragraph (a) of § 9.180 (except for the table) and substitute a new paragraph (a) to read as follows:

(a) Except when transmitting single sideband emissions, the carrier frequency shall be maintained within the applicable following percentage of the assigned frequency.

5. Delete paragraphs (c) and (d) of § 9.180 and insert new paragraphs (c), (d), and (e) to read as follows:

(c) When transmitting single sideband emissions, the carrier frequency shall be maintained within the applicable following number of cycles per second of the specified carrier frequency.

(1) All ground stations .... 5 cps
(2) All aircraft stations .... 20 cps

(d) Radar transmitters operated on frequencies above 2400 Mc shall meet the following requirements in lieu of a frequency tolerance: The frequency at which maximum emission occurs shall be within the authorized frequency band and shall not be closer than 1.5/T Mc to the upper and lower limits of the authorized bandwidth, where T is the pulse duration in microseconds.

(e) Tolerances other than those specified in this section may be authorized upon a satisfactory showing of need therefor. In such cases, the tolerance authorized may be specified on the instrument of authorization.

6. Delete the table following paragraph (b) of § 9.181 and insert a new table to read as follows:

Class of emission	Emission designator	Authorized band width	
		Below 50 Mc	Above 50 Mc
		Kilocycles	*Kilocycles*
A1	0.1A1	0.25	
A2	2.1A2	2.724	
A3	6A3	8.0	50
A3a	3A3a	4.0	
F1	1.7F1	1.7	
F1	2.5F1	2.5	
P	(1)		(1)

1 To be specified on the authorization.

7. Delete paragraph (d) of § 9.181 and substitute a new paragraph (d) to read as follows:

(d) An authorization to use radiotelephone emission will be construed to include use of tone signals or signaling devices whose sole function is to establish or maintain voice communications.

8. Delete paragraph (a) of § 9.183 and substitute a new paragraph (a) to read as follows:

(a) The power of any spurious emission originating in a type accepted transmitter authorized in the Aviation Services shall be reduced below output power in accordance with the following schedule:

(1) On any frequency removed from the center of authorized frequency band of emission by 50 to 100 per cent of the authorized emission bandwidth: at least 26 decibels;

(2) On any frequency removed from the center of the authorized frequency band of emission by 100 to 250 per cent of the authorized emission bandwidth: at least 35 decibels.

(3) On any frequency removed from the center of the authorized frequency band of emission by more than 250 per cent of the authorized emission bandwidth: at least the number of decibels indicated in the following table:

(i) Aircraft stations below 30 Mc: 40 db.

(ii) Aircraft stations above 30 Mc: $43+10 \log_{10}$ (power in watts) db.

(iii) All ground stations: $43+10 \log_{10}$ (power in watts) db, or 80 db whichever is the lesser attenuation.

9. Delete paragraph (a) of § 9.184 and substitute a new paragraph (a) to read as follows:

(a) When double sideband full carrier amplitude modulation is used for telephony, the modulation percentage shall be sufficient to provide efficient communication and shall normally be maintained above 70 per cent on peaks but shall not exceed 100 per cent.

10. Delete paragraph (c) of § 9.184 and substitute a new paragraph (c) to read as follows:

(c) In order to meet requirements for type acceptance in the Aviation Services, a double sideband full carrier amplitude modulated radiotelephone transmitter with rated carrier power output exceeding 10 watts shall be capable of automatically preventing modulation in excess of 100 percent. In the event that operation of any licensed radiotelephone transmitter causes harmful interference to any authorized radio service because of excessive modulation, the Commission may require that the use of such transmitter be discontinued until it is rendered capable of automatically preventing modulation in excess of 100 percent.

11. Add a new paragraph (d) to § 9.184 to read as follows:

(d) In order to meet requirements for type acceptance in the Aviation Services, a single sideband transmitter shall be capable of operation in both of the following modes:

(1) With the carrier suppressed at least 26 db below peak power.

(2) With the carrier transmitted at a level between 3 and 6 db below peak power.

12. Add new paragraph (e) to § 9.184 to read as follows:

(e) In single sideband operation, the sideband on the higher frequency side of the carrier frequency shall be transmitted.

[F. R. Doc. 57-8764; Filed, Oct. 23, 1957; 8:50 a. m.]

[47 CFR Part 11]

[Docket No. 12221; FCC 57-1150]

INDUSTRIAL RADIO SERVICES

SINGLE SIDEBAND TECHNICAL SPECIFICATIONS

In the matter of amendment of Part 11 of the Commission's rules to provide technical standards for the governing of single sideband systems operating on frequencies below 10 Mc.; Docket No. 12221.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. In a Public Notice of October 5, 1955 (FCC 55-988), the Commission announced an intention to give future consideration to a possibility of requiring single sideband operation for the mobile radiotelephone service. In that Public Notice it was pointed out that because single sideband operation offered a possible means of reducing the bandwidth required by stations using conventional double sideband methods, additional frequency-channels might be thereby derived to aid in the relief of congestion on existing channels.

3. During the past two years the Commission has received expressions of single sideband interest at an increasing rate in many of its radio services. Although the most interest has so far been displayed in the Aviation service, important advances have also been made in some of the other services, particularly the In-

dustrial Radio Services. In these services a number of developmental grants for single sideband operation have already been extended, and the Commission anticipates that additional industrial grants will be issued in coming months. In order to protect the recipients of these grants as much as possible against unnecessary and untimely obsolescence of equipment, the Commission is here proposing the adoption of technical standards for the governing of these single sideband systems. Because virtually all of the grants in question for some time to come will be on frequencies below 10 Mc, only standards for these frequencies are being proposed at this time.

4. The proposed standards are set forth below, and authority for their adoption is set forth in sections 303 (c), (f) and (r) of the Communications Act of 1934, as amended.

5. Any interested person who is of the opinion that the proposed standards should not be adopted or should not be adopted in the form set forth below, may file with the Commission, on or before February 3, 1958, written data, views, or arguments setting forth his comments. Comments in support of the proposed standards may also be filed on or before the same date. Comments in reply to original comments may be filed on or before the tenth day following the last day for the filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all timely-filed comments prior to taking final action in this matter, and, if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's rules, any statement, brief or comment filed in the above-entitled proceeding must be accompanied by 14 additional copies thereof.

Adopted: October 16, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

It is proposed to amend Part 11 of the Commission's Rules to add a new § 11.111 to read as follows:

§ 11.111 *Single sideband technical specifications.* (a) Where the use of single sideband type A3a emission is authorized in these services on frequencies below 10 Mc, the authorization and all operation thereunder shall be in accordance with the provisions of this section, notwithstanding any other technical provisions of this part to the contrary.

(b) The frequency coinciding with the center of the authorized frequency band of emission shall be the "assigned frequency;" in addition the carrier frequency shall also be specified. The specified carrier frequency will be 1650 cycles lower than the assigned frequency.

(c) When transmitting single sideband emissions, the carrier frequency shall be maintained within 20 cycles of the specified carrier frequency.

(d) For type A3a emission the bandwidth occupied by the emission shall not exceed 2.7 kc. The authorized frequency band of emission extends from 300 to 3000 cycles above the carrier frequency. The authorization to use type A3a emission will be construed to include the use of tone signals or signaling devices whose sole function is to establish or maintain communications between stations.

(e) Except for short periods necessary for testing or tuning, the carrier frequency power of transmitters authorized to use type A3a emission shall be suppressed at least 50 db below the output power. The power of any other emission outside the authorized frequency band of emission shall be suppressed below the output power in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized frequency band of emission by between 50 and 100 percent of the authorized bandwidth, at least 26 db.

(2) On any frequency removed from the center of the authorized frequency band of emission by between 100 and 250 percent of the authorized bandwidth, at least 35 db.

(3) On any frequency removed from the center of the authorized frequency band of emission by more than 250 percent of the authorized emission bandwidth, at least the number of db equal to $43+10 \log_{10} P$, where P is the output power.

(f) Power determinations for transmitters authorized to use type A3a emission shall be in accordance with the following:

(1) For the purpose of demonstrating compliance with paragraph (e) of this section, the term "output power" means peak power at the transmitter output terminals and is defined as the mean power during one radio frequency cycle at the highest crest of the modulation envelope.

(2) The maximum permissible power input which may be authorized for single sideband operation is one kilowatt.

(3) Transmitters employing type A3a emission shall be equipped with a means of determining that the power input during operation does not exceed that specified in the station license. This determination shall be made during voice modulation by the peak reading of a meter, which with its associated circuits, has a rise time constant not slower than 0.25 second.

[F. R. Doc. 57-8765; Filed, Oct. 23, 1957; 8:50 a. m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 71-75, 78]

[Notice 33; Docket No. 3666]

TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

NOTICE OF PROPOSED RULE MAKING

OCTOBER 4, 1957.

The Commission is in receipt of applications for early amendment of the above-entitled regulations insofar as they apply to shippers in the preparation of articles for transportation, and to all carriers by rail and highway. The proposed amendments and the reasons therefor are set forth below.

Application for these amendments ordinarily would be considered at our next hearing in this docket. It appears, however, that the proposed amendments have been the subject of exchanges and study by interested parties, in which substantial agreement has been reached. In view thereof no oral hearing is contemplated at this time.

Any party desiring to make representations in favor of or against the proposed amendments may do so through the submission of written data, views, or arguments. The original and five copies of such submission may be filed with the Commission on or before November 5, 1957. The proposed amendments are subject to change or changes that may be made as a result of such submissions.

Notice to the general public will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection, and by filing a copy of the notice with the Director, Division of the Federal Register.

(62 Stat. 738, 18 U. S. C. 831-835; 49 Stat. 546, 52 Stat. 1237, 54 Stat. 921, 49 U. S. C. 304)

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY,
Secretary.

PART 71—GENERAL INFORMATION AND REGULATIONS

In § 71.8 amend paragraph (f) (1) (15 F. R. 8263, Dec. 2, 1950) to read as follows:

§ 71.8 *Definitions.* * * *

(f) * * *

(1) Any tank designed to be permanently attached to any motor vehicle or any container not permanently attached to any motor vehicle which by reason of its size, construction, or attachment to any motor vehicle must be loaded and/or unloaded without being removed from the motor vehicle and which tank or container is to be used to transport any flammable liquid, corrosive liquid, poisonous liquid, class B, or compressed gas, hereby designated "cargo tank".

PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71-78 OF THIS CHAPTER

Amend § 72.5 *Commodity list* (15 F. R. 8263, 8264, 8265, 8266, 8268, 8269, 8270, 8271, 8273, Dec. 2, 1950) (21 F. R. 9355, Nov. 30, 1956) (19 F. R. 8524, Dec. 14, 1954) (21 F. R. 4431, June 23, 1956) (17 F. R. 4293, May 10, 1952) as follows:

§ 72.5 *List of explosives and other dangerous articles.* (a) * * *

Article	Classed as	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
(Change)				
Acids, liquid, n. o. s.	Cor. L.	73.244, 73.245	White	5 pints.
Alcohol, allyl	Pois. B	73.345, 73.346	Poison	55 gallons.
Alcohol, wood (methanol, methyl alcohol)	F. L.	73.118, 73.125	Red	10 gallons.
Allyl alcohol. *See* Alcohol, allyl.				
Ammonium bichromate (ammonium dichromate).	F. S.	73.153, 73.154, 73.235	Yellow	100 pounds.
Benzyl bromide (bromotoluene, alpha)	Cor. L.	No exemption, 73.281	White	5 pints.
Bromotoluene, alpha. *See* Benzyl bromide.				
Dicumyl peroxide, solid	Oxy. M.	73.153, 173.154	Yellow	25 pounds.
Dinitrochlorbenzol, solid (*dinitrochlorobenzene, chlorodinitrobenzol*).	Pois. B	73.364, 73.365	Poison	200 pounds.
Hydrofluoric and sulfuric acids, mixtures	Cor. L.	No exemption, 73.290	White	10 pints.
Igniters, jet thrust (*jato*), class B explosives	Expl. B	No exemption, 73.92	None	550 pounds.
Jet thrust unit (*jato*), class B explosives	Expl. B	No exemption, 73.92	None	550 pounds.
Mercuric sulfo cyanate, solid (mercuric thiocyanate).	Pois. B	73.364, 73.365	Poison	200 pounds.
Mercury bichloride, solid (mercuric chloride).	Pois. B	73.364, 73.372	Poison	200 pounds.
Methanol (methyl alcohol). *See* Alcohol, wood.				
Mixtures of hydrofluoric and sulfuric acids. *See* Hydrofluoric and sulfuric acids, mixtures.				
Propellant explosives, class A	Expl. A	No exemption, 73.64 (d).		See § 73.86.
Propellant explosives, class B	Expl. B	No exemption, 73.93	Red#	10 pounds.
(Add)				
Cigarette lighters charged with fuel	See § 73.21 (d)			
Chlorodinitrobenzol. *See* Dinitrochlorbenzol, solid.				
Dimethylhexane dihydroperoxide	Oxy. M.	No exemption, 73.157, 73.158.	Yellow	25 pounds.
Lighter fluid. *See* Cigar and cigarette lighter fluid.				
Mercaptan mixtures, aliphatic*	F. L.	No exemption, 73.141	Red	10 gallons.
Mercuric chloride. *See* Mercury bichloride, solid.				
Methyl alcohol (methanol). *See* Alcohol, wood.				
Nitric ether. *See* Ethyl nitrate.				
Oil of mirbane. *See* Nitrobenzol, liquid.				
Self-lighting cigarettes	See § 73.21 (d)			
*Weed killing compounds, liquid. *See* *Compounds, tree or weed killing, liquid.				
(Cancel)				
*Aliphatic mercaptan mixtures	F. L.	No exemption, 73.141	Red	10 gallons.
Mercuricyanamid solid	Pois. B	73.364, 73.365	Poison	200 pounds.

PART 73—SHIPPERS

SUBPART A—PREPARATION OF ARTICLES FOR TRANSPORTATION BY CARRIERS BY RAIL FREIGHT, RAIL EXPRESS, HIGHWAY, OR WATER

1. In § 73.21 add paragraph (d) (18 F. R. 802, Feb. 7, 1953) to read as follows:

§ 73.21 *Prohibited packing.* * * *

(d) The offering for transportation of any package containing a cigarette lighter charged with fuel and equipped with an ignition element, or any similar heating, lighting, or ignition device, or any self-lighting cigarette, is forbidden unless the design and method of packaging insofar as they affect safety in transportation have been approved by the Bureau of Explosives.

2. In § 73.31 amend paragraph (a) and Table; add Note 12 to paragraph (a) table; amend paragraph (f); add paragraph (g) (10); amend paragraph (h) (16 F. R. 9372, Sept. 15, 1951) (21 F. R. 4562, 4563, June 26, 1956) (22 F. R. 4789, July 9, 1957) to read as follows:

§ 73.31 *Qualification, maintenance, and use of tank cars.* (a) Tanks mounted on or forming part of a car and built in compliance with the American Railway Association's specification for tank cars prior to July 1, 1927; or built in compliance with the Commission's specifications for tanks of tank cars in force prior to the effective date of Parts 71–78 of this chapter, including tanks already constructed or under construction on the effective date hereof in compliance with specifications for fusion-welded tanks of tank cars are authorized for service, until further order of the Commission, as follows:

Where these regulations call for specification Nos.—	These specification containers may also be used subject to the provisions of the following notes—
103 [4,5,9] and 103-W [4,5,9]	ARA-II,[1,4,5] III [4,5,9] and IV.[5,9]
103A [4] and 103A-W [4]	ARA-II [2,4] and III.[2,4]
103B [4] and 103B-W [4]	ARA-II [4] and III,[4] rubber lined.
103C-W [11]	103C.[8,11]
103D-W, 103E-W, 103A-N-W.	(See Note 10.)
104 [4,9] and 104-W [4,9]	ARA-IV.[4,9]
105A100 and 105A100-W.	104A [7] and 104A-W.[7]
105A200-W	105A100-W.[12]
105A100AL-W	104A-AL-W.[7]
105A200AL-W	105A100AL-W.[12]
105A300-W	ARA-V,[3] ICC-105 [3] and 105A300.[3]
105A400-W	105A400.
105A500-W	105A500.
105A600-W	105A600.
106A500 and 106A500-X.	ICC-27 tanks mounted on a car and classified as multiunit tank prior to October 1, 1930.[6]
106A800 and 106A800X.	None.
106A800NCI	None.
107A****	None.

* * * * *

[No change in notes.]

[12] Tanks built as Spec. ICC-105A100-W or 105A100AL-W (§ 78.285 or § 78.294 of this chapter) may be altered and reclassified as Spec. 105A200-W or 105A200AL-W (§ 78.307 or § 78.308 of this chapter) respectively, by installing safety valves, retesting and stenciling in accordance with the applicable specification for the transportation of commodities authorized in Spec. ICC-105A200-W or 105A200AL-W (§ 78.307 or § 78.308 of this chapter) tanks.

* * * * *

(f) After alterations of tank cars or equipment therefor from original design, a certificate of compliance with the respective specification must be furnished to the car owner, to the Bureau of Explosives, and to the Secretary, Mechanical Division, Association of American Railroads.

(g) * * *

(10) Tanks built to one specification and stenciled to another specification to accommodate a different valve setting must be retested in accordance with the higher specification test pressure stenciled on the tank or jacket.

(h) Tank cars and appurtenances may be used for the transportation of any commodity for which they are authorized. Tank cars proposed for a commodity service other than authorized, must be approved for such service by the Association of American Railroads, Committee on Tank Cars. Transfer of a tank car from one authorized service to another may be made only by the owner or owner's authorization. Class ICC-105A type tank cars may be used for any commodity for which they are approved by the Committee on Tank Cars when stenciled accordingly. When a tank car is stenciled to indicate that it is authorized for one commodity only, it must not be used for any other service.

[No change in Note 1.]

SUBPART B—EXPLOSIVES; DEFINITIONS AND PREPARATION

1. In § 73.92 cancel paragraph (d) (21 F. R. 3009, May 5, 1956) to read as follows:

§ 73.92 *Jet thrust units (jato), class B, igniters, jet thrust (jato), class B, or starter cartridges, jet engine, class B.* * * *

(d) [Canceled.]

2. In § 73.93 amend paragraph (f) (1) (20 F. R. 950, Feb. 15, 1955) to read as follows:

§ 73.93 *Propellant explosives for cannon, small-arms, rockets, guided missiles, or other devices.* * * *

(f) * * *

(1) In tightly closed metal cans or fiber containers, not exceeding 1 pound each, or in inside metal cans or fiber containers containing not more than one grain of propellant, not exceeding 5 pounds each, packed in outside wooden boxes, spec. 15A, 15B, or 15C (§ 78.168, § 78.169, or § 78.170 of this chapter), or outside fiberboard boxes, spec. 12B, 23F, or 23H (§ 78.205, § 78.214, or § 78.219 of this chapter). Not more than 10 pounds of propellant powder may be shipped in one outside container. Each outside container must be plainly marked "PROPELLANT EXPLOSIVES, CLASS B".

SUBPART C—FLAMMABLE LIQUIDS; DEFINITION AND PREPARATION

1. In § 73.135 amend paragraph (a) (9) (21 F. R. 7600, Oct. 4, 1956) to read as follows:

§ 73.135 *Dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.* (a) * * *

(9) Spec. MC 300, MC 303 or MC 304 (§ 78.321, § 78.324 or § 78.325 of this chapter). Tank motor vehicles.

2. In § 73.141 add paragraphs (a) (9) and (b) (16 F. R. 11777, Nov. 21, 1951) to read as follows:

§ 73.141 *Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.* (a) * * *

(9) Specification cylinders as prescribed for any compressed gas, except acetylene.

(b) Warning or odorizing devices containing not more than one ounce of a mercaptan or an aliphatic mercaptan mixture in a hermetically sealed container or in a hermetically sealed portion of the device are not subject to the regulations in Parts 71–78 and 197 of this chapter.

SUBPART D—FLAMMABLE SOLIDS AND OXIDIZING MATERIALS; DEFINITION AND PREPARATION

1. In § 73.153 add paragraphs (c) (65), (66), and (67) (15 F. R. 8303, Dec. 2, 1950) to read as follows:

§ 73.153 *Exemptions for flammable solids and oxidizing materials.* * * *

(c) * * *

(65) Hafnium metal powder or sponge, dry.

(66) Hafnium metal powder, wet or sludge.

(67) Dimethylhexane dihydroperoxide.

2. In § 73.157 amend the heading and introductory text of paragraph (a) (15 F. R. 8304, Dec. 2, 1950) to read as follows:

§ 73.157 *Benzoyl peroxide, chlorobenzoyl peroxide (para), dimethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.* (a) Benzoyl peroxide, chlorobenzoyl peroxide (para), dimethylhexane dihydroperoxide, lauroyl peroxide, and succinic acid peroxide, wet with at least 30 percent of water by weight must be packed in specification containers as follows:

* * * * *

3. In § 73.158 amend the heading and introductory text of paragraph (a); amend paragraph (a) (3) (21 F. R. 7600, Oct. 4, 1956) to read as follows:

§ 73.158 *Benzoyl peroxide, dry, dimethylhexane dihydroperoxide, dry, lauroyl peroxide, dry, chlorobenzoyl peroxide (para), dry, or succinic acid peroxide, dry.* (a) Benzoyl peroxide, dry, dimethylhexane dihydroperoxide, dry, lauroyl peroxide, dry, chlorobenzoyl peroxide (para), dry, or succinic acid peroxide, dry, may be shipped when packed in specification containers as follows:

* * * * *

(3) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes, with inside fiber containers securely closed by taping or gluing, or inside securely closed paper bags lined with polyethylene not less than 0.002 inch thick, not over 1 pound capacity each. Except for lauroyl peroxide, dry, each inside container must be surrounded by asbestos or fire-resistant cushioning material which will protect the contents with equal efficiency. Gross weight in Spec. 12B65 boxes may be more than 65 but not more than 80 pounds provided net weight of contents does not exceed 50 pounds.

4. In § 73.187 amend paragraph (a) (1) (15 F. R. 8308, Dec. 2, 1950) to read as follows:

§ 73.187 *Peroxide of sodium.* (a) * * *

(1) Spec. 11A, 11B, 15A, 15B, 15C, 16A, or 19A (§§ 78.160, 78.161, 78.168, 78.169, 78.170, 78.185, or 78.190 of this chapter). Wooden barrels, kegs, or boxes, with inside containers which must be airtight metal cans.

5. In § 73.221 amend paragraphs (a) (2) and (3) (15 F. R. 8311, Dec. 2, 1950) to read as follows:

§ 73.221 *Liquid peroxides other than acetyl peroxide solution, acetyl benzoyl peroxide solution, cumene hydroperoxide, dicumyl peroxide, hydrogen peroxide, peracetic acid, and tertiary butylisopropyl benzene hydroperoxide.* (a) * * *

(2) Spec. 15A, 15B, 15C, 16A, or 19A (§§ 78.168, 78.169, 78.170, 78.185, or 78.190 of this chapter). Wooden boxes with inside containers which must be glass, earthenware, or metal, not over 1 gallon each, cushioned with incombustible packing material in sufficient quantity to absorb the contents of the inner container. Metal inside containers authorized only for materials which will not react dangerously with or be decomposed by contact with metal.

(3) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside containers which must be glass, earthenware, or metal, not over 1 gallon each, cushioned with incombustible packing material in sufficient quantity to absorb the contents of the inner container. Not more than one 1-gallon inside container shall be packed in one outside fiberboard box. Metal inside containers authorized only for materials which will not react dangerously with or be decomposed by contact with metal.

6. In § 73.235 amend the heading and introductory text of (a) (21 F. R. 9356, Nov. 30, 1956) to read as follows:

§ 73.235 *Ammonium bichromate (ammonium dichromate).* (a) Ammonium bichromate (ammonium dichromate) must be packed in specification containers as follows:

* * * * *

SUBPART E—ACIDS AND OTHER CORROSIVE LIQUIDS; DEFINITION AND PREPARATION

1. In § 73.244 amend paragraph (c) (11) (15 F. R. 8313, Dec. 2, 1950) to read as follows:

§ 73.244 *Exemptions for acids and other corrosive liquids.* * * *

(c) * * *

(11) Bromotoluene, alpha.

2. In § 73.272 add paragraph (f) (3); cancel paragraphs (i) (5) and (6) (15 F. R. 8321, Dec. 2, 1950) (21 F. R. 673, Jan. 31, 1956) (21 F. R. 7601, Oct. 4, 1956) to read as follows:

§ 73.272 *Sulfuric acid.* * * *

(f) * * *

(3) Spec. 6J (§ 78.100 of this chapter). Steel barrels or drums having inside Spec. 2S (§78.35 of this chapter) polyethylene drum. Authorized for sulfuric acid concentrations not over 76 percent. Gross weight restriction indicated by the gross weight embossment in the steel barrels or drums shall be waived.

* * * * *

(i) * * *

(5) [Canceled.]

(6) [Canceled.]

3. In § 73.273 add paragraph (a) (5) (15 F. R. 8321, Dec. 2, 1950) to read as follows:

§ 73.273 *Sulfur trioxide, stabilized.* (a) * * *

(5) Spec. MC 310 and MC 311 (§§ 78.330 and 78.331 of this chapter). Tank motor vehicles. Authorized only for stabilized sulfur trioxide. Tanks must be equipped with spring-relief safety valves. Tanks equipped with interior heater coils not permitted.

4. In § 73.281 amend the heading and introductory text of paragraph (a) (15 F. R. 8322, Dec. 2, 1950) to read as follows:

§ 73.281 *Benzyl bromide (bromotoluene, alpha).* (a) Benzyl bromide (bromotoluene, alpha) must be packed in specification containers as follows:

* * * * *

SUBPART F—COMPRESSED GASES; DEFINITION AND PREPARATION

1. In § 73.306 amend paragraph (c) (1) (15 F. R. 8326, Dec. 2, 1950) to read as follows:

§ 73.306 *Liquefied gases, except acetylene in solution.* * * *

(c) * * *

(1) Spec. 2P (§ 78.33 of this chapter). Inside metal containers packed in strong wooden or fiber boxes of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the container must not exceed 85 pounds per square inch absolute at 70° F. Each completed metal container filled for shipment must be heated until content reaches a minimum temperature of 130° F., without evidence of leakage, distortion or other defect. Each outside shipping container must be plainly marked "Inside containers comply with prescribed specifications".

2. In § 73.308 paragraph (a) table amend the entry "Dichlorodifluoromethane" (20 F. R. 951, Feb. 15, 1955) to read as follows:

§ 73.308 *Compressed gases in cylinders.* (a) * * *

Kind of gas	Maximum permitted filling density (see Note 12) (percent)	Cylinders (see Note 11) marked as shown in this column must be used except as provided in Note 1 and § 73.34 (a) to (e)
(Change) Dichlorodifluoromethane	119	ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-4B240ET; ICC-9; ICC-41.

SUBPART G—POISONOUS ARTICLES; DEFINITION AND PREPARATION

1. In § 73.372 amend the heading and introductory text of paragraph (a) (15 F. R. 8328, Dec. 2, 1950) to read as follows:

§ 73.372 *Mercury bichloride (mercuric chloride).* (a) Mercury bichloride (mercuric chloride) must be packed in specification containers as follows:

* * * * *

2. In § 73.392 amend paragraph (c) (19 F. R. 6269, Sept. 29, 1954) to read as follows:

§ 73.392 *Exemptions for radioactive materials.* * * *

(c) Radioactive materials such as ores, residues, salts of natural uranium and thorium, etc., of low activity packed in strong tight containers are exempt from specification packaging and labeling requirements for shipments in carload lots by rail freight only, provided the gamma radiation or equivalent will not exceed 10 milliroentgens per hour at a distance of 12 feet from any surface of the car and that the gamma radiation or equivalent will not exceed 10 milliroentgens per hour at a distance of 5 feet from either end surface of the car. There must be no loose radioactive material in the car and the shipment must be braced so as to prevent leakage or shift of lading under conditions normally incident to transportation. The car must be placarded by the shipper as provided in §§ 74.541 (b) and 74.553 of this chapter. Except when handling is supervised by the Atomic Energy Commission, shipments must be loaded by consignor and unloaded by consignee.

PART 74—CARRIERS BY RAIL FREIGHT

SUBPART A—LOADING, UNLOADING, PLACARDING AND HANDLING CARS; LOADING PACKAGES INTO CARS

In § 74.532 amend paragraph (j) (1) (15 F. R. 8348, Dec. 2, 1950) to read as follows:

§ 74.532 *Loading other dangerous articles.* * * *

(j) * * *

(1) The amount of radioactive ores, residues, and similar materials loaded in a car must be limited as provided in § 73.392 of this chapter. The amount of any other radioactive materials loaded in a freight car shall be limited so that the quantity does not exceed 40 units as determined by totaling the number of units shown on the individual labels on the packages.

NOTE 1: For purposes of these regulations 1 unit equals 1 milliroentgen per hour at 1 meter for hard gamma radiation or the amount of radiation which has the same effect of film as 1 mrhm of hard gamma rays of radium filtered by ½ inch of lead.

SUBPART E—HANDLING BY CARRIERS BY RAIL FREIGHT

In § 74.586 add paragraph (h) (15 F. R. 8355, Dec. 2, 1950) to read as follows:

§ 74.586 *Handling explosives and other dangerous articles.* * * *

(h) A container of radioactive material bearing red label must not be placed in cars, depots or other places closer than 3 feet to an area which may be continuously occupied by passengers, employees, or shipments of animals. When more than one such container is present, the distance from occupied areas must be computed from the table in subparagraph (2) of this paragraph by adding the number of units shown on labels on the containers.

(1) In a combination car carrying passengers and/or express shipments, a container of radioactive material must not be placed closer than 3 feet to the dividing partition. For more than one such container the distance must be computed by method described in subparagraph (2) of this paragraph.

(2) A container of radioactive material, red label, must not be placed closer than 15 feet to any package containing undeveloped film. If more than one such container is present, the distance must be computed from the table in this subparagraph by adding the number of units shown on the labels on the packages.

TABLE

Total number of units	Minimum distance in feet to nearest undeveloped film	Distance in feet to area that may be continuously occupied by passengers or employees	Distance in feet from dividing partition of a combination car
1 to 10	15	3	3
11 to 20	20	4	4
21 to 30	25	5	5
31 to 40	30	6	6

NOTE 1: The distance in the table must be measured from the nearest point of the radioactive container or containers.

NOTE 2: 1 unit equals 1 milliroentgen per hour at 1 meter for hard gamma radiation or the amount of radiation which has the same effect on film as 1 mrhm. of hard gamma rays of radium filtered by ½ inch of lead.

(3) Not more than 40 units of radioactive material (red label) shall be transported in any car or stored in any location at one time.

(4) All containers of radioactive material (red label) must be carried by the handles when handles are provided.

PART 75—CARRIERS BY RAIL EXPRESS

In § 75.655 paragraph (j) (2) table amend the fourth column heading (15 F. R. 8359, Dec. 2, 1950) to read as follows: "Distance in feet from dividing partition of a combination car".

PART 78—SHIPPING CONTAINER SPECIFICATIONS

SUBPART C—SPECIFICATIONS FOR CYLINDERS

In § 78.55–2 amend paragraph (a) (15 F. R. 8417, Dec. 2, 1950) to read as follows:

§ 78.55 *Specification 4B240ET; welded and brazed cylinders made from electric resistance welded tubing.*

§ 78.55–2 *Type, spinning process, size and service pressure*—(a) *Type.* Cylinders must be of brazed type made from electric resistance welded tubing which has been certified to have been pressure tested to a fiber stress of 24,000 pounds per square inch, as calculated by the formula:

$$P=\frac{24{,}000(D^2-d^2)}{(1.3D^2+0.4d^2)}$$

where P is the pressure required for pressure testing of tubing. Pressure shall be maintained for not less than 30 seconds. Lengths of tubing that leak must be rejected. No repairs permitted.

SUBPART E—SPECIFICATIONS FOR WOODEN BARRELS, KEGS, BOXES, KITS, AND DRUMS

1. In § 78.165–8 (a) table amend the subcolumn heading "Ends" by inserting a reference to a footnote 3; add footnote 3 to paragraph (a) table (15 F. R. 8460, Dec. 2, 1950) to read as follows:

[3] As provided by § 73.65 (a) (1), Note 1, of this chapter, boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

2. In § 78.168–3 add paragraph (b) (15 F. R. 8460, Dec. 2, 1950) to read as follows:

§ 78.168 *Specification 15A; wooden boxes, nailed.*

§ 78.168–3 *Ends.* * * *

(b) As provided by § 73.65 (a) (1), Note 1, of this chapter, wooden boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

3. In § 78.185–9 add paragraph (b) (15 F. R. 8470, Dec. 2, 1950) to read as follows:

§ 78.185 *Specification 16A; plywood or wooden boxes, wirebound.*

§ 78.185–9 *Ends.* * * *

(b) As provided by § 73.65 (a) (1), Note 1, of this chapter, wooden boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

SUBPART F—SPECIFICATIONS FOR FIBERBOARD BOXES, DRUMS, AND MAILING TUBES

1. In § 78.209–8 paragraph (a) (2) add Note 1 (20 F. R. 8110, Oct. 28, 1955) to read as follows:

§ 78.209 *Specification 12H; fiberboard boxes.*

§ 78.209–8 *Type authorized.* (a) * * * (2) * * *

NOTE 1: Hand-holes oval in shape, not more than 1 inch in width by 3 inches in length, and horizontal with top score line, are authorized in ends of top section of boxes.

2. In § 78.219–7 add paragraph (b) (17 F. R. 1564, Feb. 20, 1952) to read as follows:

§ 78.219 *Specification 23H; fiberboard boxes.*

§ 78.219–7 *Type authorized.* * * *

(b) Hand-holes oval in shape, not more than 1 inch in width by 3 inches in length and horizontal with top score line, are authorized in ends of top section of full depth cover telescope type boxes.

SUBPART I—SPECIFICATIONS FOR TANK CARS

1. In § 78.281–21 amend paragraph (a) (1) (22 F. R. 4794, July 9, 1957) to read as follows:

§ 78.281 *Specification ICC–103A–W; fusion-welded steel tanks to be mounted on or forming part of a car.*

§ 78.281–21 *Marking.* (a) * * *

(1) ICC–103A–W in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. If tanks are fabricated from ASTM A–212 Grade A or B steel, the specification number of this material must also be stamped in letters and figures at least ⅜ inch high into the metal near the center of both outside heads by the tank builder. ICC–103A–W must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car.

2. In § 78.282–20 amend paragraph (a) (1) (22 F. R. 4794, July 9, 1957) to read as follows:

§ 78.282 *Specification ICC–103B–W; rubber lined fusion-welded steel tanks to be mounted on or forming part of a car.*

§ 78.282–20 *Marking.* (a) * * *

(1) ICC–103B–W in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. If tanks are fabricated from ASTM A–212 Grade A or B steel, the specification number of this material must also be stamped in letters and figures at least ⅜ inch high into the metal near the center of both outside heads by the tank builder. ICC–103B–W must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car.

3. In § 78.299–8 amend the section heading, and add paragraph (b) (21 F. R. 4623, June 26, 1956) to read as follows:

§ 78.299 *Specification ICC–103A–N–W; fusion-welded nickel or nickel alloy tanks to be mounted on or forming part of a car.*

§ 78.299–8 *Manway rings, safety vent flange, or other attachments.* * * *

(b) Botton washout nozzle may be riveted or fusion-welded. Riveted joints must be made metal to metal without interposition of other materials. Rivets, if used, must be driven hot and calked inside. For computing areas the effective diameter of a driven rivet is the diameter of its hole, which hole must in no case exceed nominal diameter of rivet by more than $\frac{1}{16}$ inch. Use of rivets of less than ⅝ inch diameter prohibited. Joints formed by attachment to tank must be calked on the inside. Fusion welding for securing this attachment to tank must be as prescribed in paragraph (a) of this section.

SUBPART J—SPECIFICATIONS FOR CONTAINERS FOR MOTOR VEHICLE TRANSPORTATION

1. In § 78.321–12 paragraph (a) amend the heading of Table I, and amend the heading of Table III in paragraph (b); amend entire § 78.321–13; in § 78.321–18 amend the section heading and paragraph (a), the introductory text of paragraph (b), paragraph (b) (2), and add paragraph (b) (6) (16 F. R. 11785, Nov. 21, 1951) (21 F. R. 7610, Oct. 4, 1956) (15 F. R. 8546, Dec. 2, 1950) to read as follows:

§ 78.321 *Specification MC 300; cargo tanks constructed of mild (open hearth or blue annealed) steel, or combination of mild steel with high-tensile steel, or of stainless steel.*

§ 78.321–12 *Thickness of steel sheets.* (a) * * *

TABLE I—MINIMUM THICKNESS OF HEADS,[1] BULKHEADS, BAFFLES (DISHED, CORRUGATED, REINFORCED, OR ROLLED) AND RING STIFFENERS

* * * * *

(b) *Thickness of high-tensile and stainless steel sheets.* * * *

TABLE III—MINIMUM THICKNESS OF HEADS,[1] BULKHEADS, BAFFLES (DISHED, CORRUGATED, REINFORCED, OR ROLLED) AND RING STIFFENERS

§ 78.321–13 *Cargo tanks constructed of a combination of mild and high-tensile steels or stainless steel.* (a) Mild steel sheets as specified in § 78.321–12 (a) may be used in combination with high-tensile steel sheets or stainless steel sheet as specified in § 78.321–12 (b) in the construction of a single tank, provided each material, where used, shall comply with the minimum requirements for the material used in the construction for that section of the tank. Whenever stainless steel sheets are used in combination with sheets of other types of steel, joints made by welding shall be formed by the use of stainless steel electrodes or filler rods on condition that the stainless steel electrodes or filler rods used in the welding be suitable for use with the grade of stainless steel concerned, according to the recommendations of the manufacturer of the stainless steel electrodes or filler rods.

§ 78.321–18 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is dicharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR STEEL RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0104L.[1]
Over 42 inches to 60 inches	0.0162L.[1]
Over 60 inches to 96 inches	0.0234L.[1]

[1] *L* is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

2. In § 78.322–12 amend the section heading and paragraph (a) table; in § 78.322–18 amend the section heading and paragraph (a), amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8548, Dec. 2, 1950) to read as follows:

§ 78.322 *Specification MC 301; cargo tanks constructed of welded aluminum alloy (grade 3S).*

§ 78.322–12 *Thickness of sheets and ring stiffeners.* (a) The minimum thickness of tank sheets and ring stiffeners shall be as follows:

Aggregate capacity, United States gallons	Shell		Head, dished, corrugated, or reinforced, and ring stiffener	
	United States gauge No.	Inch [1]	United States gauge No.	Inch [1]
600 or less	12	0.109	12	0.109
Over 600 to 1,200	9	.156	9	.156
Over 1,200:				
(a) Divided into compartments of 600 gallons or less	9	.156	6	.203
(b) If not divided into compartments, or if divided into compartments of 1,200 or more	6	.203	4	.234

[1] Approximate.

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.322–18 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles for ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with bafflles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR ALUMINUM RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0180L.[1]
Over 42 inches to 60 inches	0.0280L.[1]
Over 60 inches to 96 inches	0.0400L.[1]

[1] L is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

3. In § 78.323–12 amend the section heading and paragraph (a) table; in § 78.323–13 amend the section heading and paragraph (a), amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8550, 8551, Dec. 2, 1950) to read as follows:

§ 78.323 *Specification MC 302; cargo tanks constructed of welded aluminum alloy (ASTM B178–54T).*

§ 78.323–12 *Thickness of sheets and ring stiffeners.* (a) The minimum thickness of tank sheets and ring stiffeners shall be as follows:

Aggregate capacity, United States gallons	Shell		Head, dished, corrugated, or reinforced, and ring stiffener	
	United States gauge No.	Inch [1]	United States gauge No.	Inch [1]
600 or less	14	0.078	14	0.078
Over 600 to 1,200	12	.109	12	.109
Over 1,200:				
(a) Divided into compartments of 600 gallons or less	12	.109	10	.141
(b) If not divided into compartments, or if divided into compartments of 1,200 or more	10	.141	8	.172

[1] Approximate.

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.323–18 *Bulkheads, baffles and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR ALUMINUM RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0180L.[1]
Over 42 inches to 60 inches	0.0280L.[1]
Over 60 inches to 96 inches	0.0400L.[1]

[1] L is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

4. In § 78.324–12 paragraph (a) amend the entire table 1; in § 78.324–17 amend the section heading and paragraph (a),

amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8552, 8553, Dec. 2, 1950) to read as follows:

§ 78.324 *Specification MC 303; cargo tanks constructed of welded ferrous alloy (high-tensile steel) or stainless steel.*

§ 78.324–12 *Thickness of sheets.* (a) * * *

TABLE 1—MINIMUM THICKNESS OF HEAD, BULKHEAD, BAFFLE SHEETS AND RING STIFFENERS

Distances between bulkhead attachments to shell in inches	Volume capacity of tank in gallons per inch of length									
	6 or less		Over 6 to 10		Over 10 to 14		Over 14 to 18		Over 18	
	Bulkhead and baffle (dished, corrugated, or reinforced) sheet and ring stiffener thicknesses in United States gauge numbers and inches depending upon distances between attachments thereof to shell									
	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.
30 inches or less	17	0.056	16	0.062	15	0.070	14	0.078	13	0.094
Over 30 inches	16	.062	15	.070	14	.078	13	.094	12	.109

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.324–17 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR STEEL RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0104*L*.[1]
Over 42 inches to 60 inches	0.0162*L*.[1]
Over 60 inches to 96 inches	0.0234*L*.[1]

[1] *L* is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

5. In § 78.325–8 paragraph (d) amend the first line in the first column in the first and third tables, now reading, "Heads, bulkheads and baffles" to read "Heads, bulkheads, baffles, and ring stiffeners"; in § 78.325–9 amend the section heading, and amend paragraph (d); in § 78.325–14 amend paragraphs (a) and (b) (20 F. R. 8113, 8114, Oct. 28, 1955) (22 F. R. 2237, April 4, 1957) to read as follows:

§ 78.325 *Specification MC 304 for cargo tanks for the transportation of flammable liquids and poisonous liquids, class B having Reid (ASTM D–323) vapor pressures of 18 pounds per square inch absolute at 100° F.*

§ 78.325–9 *Bulkheads, baffles, and ring stiffeners.* * * *

(d) (1) Baffles for shell stiffeners: Every cargo tank or compartment of a cargo tank over ninety inches (90 in.) in length shall be provided with baffles or equivalent shell stiffeners so located that the maximum distance between any two baffles or stiffeners and between any baffle or stiffener and the nearest tank head or bulkhead shall not exceed sixty inches (60 in.). Ring stiffeners shall be continuous around the circumference of the tank shell and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR RING STIFFENERS

Width of tank	Section modulus	
	Steel	Aluminum
42 inches or less	0.0104 *L* [1]	0.0180 *L*.[1]
Over 42 inches to 60 inches	0.0162 *L* [1]	0.0280 *L*.[1]
Over 60 inches to 96 inches	0.0234 *L* [1]	0.0400 *L*.[1]

[1] *L* is the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

§ 78.325–14 *Safety devices*—(a) *Safety relief devices required.* Each tank and each compartment of a tank shall be provided with one or more safety relief valves of the springloaded type, provided that emergency pressure relief devices may be used for part of the required capacity thereof. All such valves and devices shall be arranged to discharge upward and unobstructed in such a manner as to prevent any impingement of escaping gas upon the tank. The emergency pressure relief devices shall be either springloaded type or frangible type.

(b) *Relief device capacity.* The required safety relief valves shall be set to close after discharge at a pressure not lower than 25 pounds per square inch gauge (25 psig.), and remain closed at all lesser pressures, provided that this requirement shall not be so construed as to forbid the use of vacuum relief valves or of combination safety relief and vacuum relief valves. At a pressure not exceeding 40 pounds per square inch gauge (40 psig.) they shall have a discharge capacity not less than that of an unobstructed opening of one square inch (1 sq. in.) for each 35 square feet (35 sq. ft.) of exterior area of the tank or compartment to which they are connected, provided that two or more such valves may be used on the same tank or compartment to obtain the discharge capacity herein required; alternatively, such valve or valves may at a pressure of 30 pounds per square inch gauge (30 psig.) have a total discharge capacity not less than that of an unobstructed opening of one square inch (1 sq. in.) for each 350 square feet (350 sq. ft.) of exterior area of the tank or compartment to which they are connected, if in addition thereto each such tank or compartment be provided with one or more frangible-type safety devices having a total discharge capacity not less than that of an unobstructed opening of nine square inches (9 sq. in.) for each 350 square feet (350 sq. ft.) of exterior area and bursting pressure not less than 30 pounds per square inch gauge (30 psig.) nor more than 40 pounds per square inch gauge (40 psig.).

6. Add § 78.326 (15 F. R. 8554, Dec. 2, 1950) to read as follows:

§ 78.326 *Specification MC 305; cargo tanks constructed of aluminum alloys for high-strength welded construction.* To be mounted on and to form part of tank motor vehicles for transportation of flammable liquids and poisonous liquids, class B.

§ 78.326-1 *Scope.* (a) This specification is primarily designed to apply to cargo tanks of tank motor vehicles to be used for the transportation of flammable liquids, or poisonous liquids, class B.

§ 78.326-2 *New cargo tank motor vehicles.* (a) A certificate from the manufacturer of the cargo tank, or from a competent testing agency, certifying that each such cargo tank is designed and constructed in accordance with the requirements of this specification shall be procured, and such certificate shall be retained in the files of the carrier during the time that such cargo tank motor vehicle is employed in the transportation of flammable liquids or poisonous liquids, class B by him. In lieu of this certificate, if the motor carrier himself elects to ascertain if any such cargo tank fulfills the requirements of the specification by his own test, he shall similarly retain the test data.

§ 78.326-3 *Novel cargo tanks of tank motor vehicles, special authorization.* (a) The Commission may, upon written request for such authorization by a motor carrier, authorize the use of limited numbers, and for limited times, of new cargo tank motor vehicles which fail to meet the requirements of this specification. In the event of such authorization, the carrier shall furnish those details concerning the design and construction of the tank as seem necessary for the determination of its ability safely to transport flammable liquids or poisonous liquids, class B.

§ 78.326-4 *Marking of cargo tanks*—(a) *Metal identification plate.* There shall be on every cargo tank a metal plate located on the right side, near the front, in a place readily accessible for inspection. This plate shall be permanently affixed to the tank by means of soldering, brazing, welding, or other equally suitable means; and upon it shall be marked by stamping, embossing, or other means of forming letters into or on the metal of the plate itself, in the manner illustrated below, at least the information indicated below. The plate shall not be so painted as to obscure the markings thereon.

Carrier's serial number [1]
Manufacturer's name
Date of manufacture
ICC MC 305

Nominal tank cap'y___________ U. S. gallons

(b) *Test date markings.* The date of the last test or retest required by this specification and the due date of the next required routine test or retest shall be painted on the tank in letters not less than 1¼ inches high, in legible colors, immediately below the metal identification plate specified in paragraph (a) of this section.

(c) *Certification by markings.* The markings specified in paragraphs (a) and (b) of this section shall serve to certify that the tank complies with all requirements of this specification.

[1] Carriers are not required to number their cargo tanks serially; any designation regularly used by the carrier to identify the tank may be put in this space.

No. 207——7

§ 78.326-5 *No hazardous repairs on loaded motor vehicles.* (a) No repairs shall be performed on any motor vehicle containing any flammable liquid or poisonous liquid, class B, or on a cargo tank, whether empty or loaded, except in such cases that such repair can be made without hazard; nor shall any such loaded motor vehicle be repaired in a closed garage.

§ 78.326-6 *No repair with flame unless gas-free.* (a) No repair of a cargo tank used for the transportation of any flammable liquid or poisonous liquid, class B, or any compartment thereof, or of any container for fuel of whatever nature, may be repaired by any method employing a flame, arc, or other means of welding, unless the tank or compartment shall first have been made gas-free.

§ 78.326-7 *Times of retesting of cargo tanks.* Every cargo tank used for the transportation of any flammable liquid or poisonous liquid, class B, shall be tested or retested as follows:

(a) *Tank out of service one year or more.* Every cargo tank which has been out of transportation service for a period of one year or more shall not be returned again to or placed in such service until it shall successfully have fulfilled the requirements set forth under § 78.326-8.

(b) *Specification tanks.* Every cargo tank complying with the requirements of this specification shall be tested at least once in every 5 year period. If tested no oftener than once in every 5 years, at least one such test shall be made in the last year of any such 5 year period. The time of reckoning for such testing of such cargo tanks shall be from the time of the last test made in accordance with the requirements set forth under § 78.326-8; and if no such tests have ever been made, such tanks shall be tested within 6 months after _______________

(c) *Novel cargo tanks.* Every cargo tank which shall have been authorized by this Commission for transportation of flammable liquids or poisonous liquids, class B under the provisions of § 78.326-3 shall be tested under requirements specifically set forth in the terms of such authorization.

(d) *Testing following accidents.* Every cargo tank capable of suitable repair following any accident in which a tank motor vehicle may have been involved shall be retested in accordance with the requirements set forth under § 78.326-8; if the cargo tank has itself been damaged in a manner likely to affect the safety of operation of the tank motor vehicle, or if the damage to the tank motor vehicle is such as to make the safety of the cargo tank uncertain.

(e) *Special testing required by the Commission.* Upon the showing of probable cause of the necessity for retest, the Commision may, in its discretion, cause any cargo tank to be retested in accordance with the requirements of § 78.326-8 at any time.

§ 78.326-8 *Test for leaks.* (a) Every cargo tank shall be tested by a minimum air or hydrostatic pressure of 3 pounds per square inch gauge applied to the whole tank and dome if it be non-compartmented. If compartmented, each individual compartment shall be similarly tested with adjacent compartments empty and at atmospheric pressure. Air pressure, if used, shall be maintained for a period of at least five minutes during which the entire surface of all joints under pressure shall be coated with a solution of soap and water, heavy oil, or other material suitable for the purpose, foaming or bubbling of which indicates the presence of leaks. Hydrostatic pressure, if used, shall be done by using water or other liquid having a similar viscosity, the temperature of which shall not exceed 100° F. during the test, and applying pressure as prescribed above, gauged at the top of the tank, at which time all joints under pressure shall be inspected for the issuance of liquid to indicate leaks. All closures shall be in place while test by either method is made. During these tests, operative relief devices shall be clamped, plugged, or otherwise rendered inoperative; such clamps, plugs, and similar devices shall be removed immediately after the test is finished. Any leakage discovered by either of the methods above described, or by any other method, shall be deemed evidence of failure to meet the requirements of this specification. Tanks failing to pass this test shall be suitably repaired, and the above described tests shall be continued until no leaks are discovered, before any cargo tank is put into service.

(b) Every cargo tank to which this specification applies shall be tested by pressure prescribed in paragraph (a) of this section and shall withstand such pressure without undue distortion, evidence of impending failure, or failure. Failure to meet this requirement shall be deemed sufficient cause for rejection under this specification. If there is undue distortion, or if failure impends or occurs, the cargo tank shall not be returned to service unless a suitable repair is made. The suitability of the repair shall be determined by the same method of test.

§ 78.326-9 *Workmanship, general.* (a) Every cargo tank shall be constructed in accordance with the best known and available practices, in addition to the other requirements of this specification.

§ 78.326-10 *Material.* (a) All sheets for shell, heads, bulkheads, and baffles of such cargo tanks shall be of aluminum alloys GR20A (5052 commercial designation) GR40A (5154 commercial designation) or GM40A (5086 commercial designation) conforming to American Society for Testing Materials Specification B178-54T.

§ 78.326-11 *Thickness of sheets.* (a) The minimum thicknesses of tank sheets shall be limited by the volume capacity of the tank, expressed in terms of gallons per inch of length; by the distance between successive bulkheads in the case of bulkhead sheets; and by the distance between bulkheads, baffles, or other shell stiffeners as well as by the radius of shell curvature in the case of shell sheets; as follows:

TABLE I—THICKNESS OF HEAD, BULKHEAD, BAFFLE SHEETS AND RING STIFFENERS [1]

	Volume capacity of tank in gallons per inch of length			
	10 or less	Over 10 to 14	Over 14 to 18	Over 18
	Heads or bulkheads—dished, corrugated or reinforced			
Thickness in decimal of inches	0.096	0.109	0.130	0.151

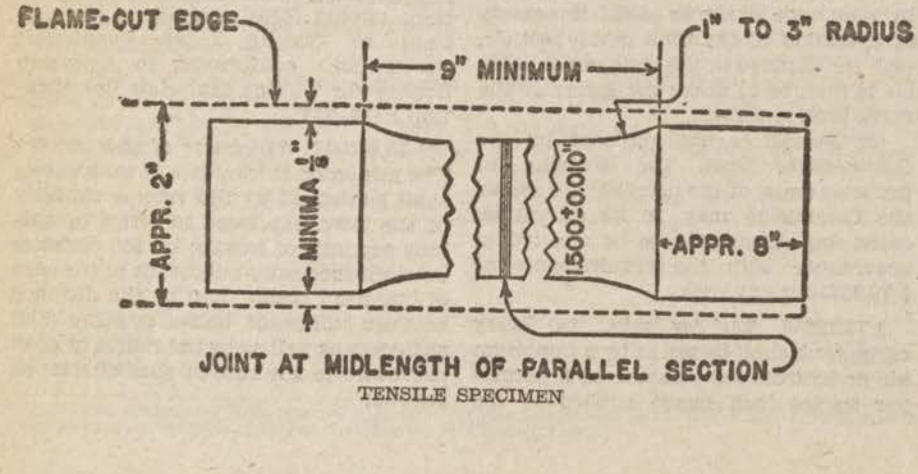
[1] Thickness of exterior head sheets shall never be less than the maximum requirements for shell sheets.

TABLE II—THICKNESS OF SHELL SHEETS

Distance between bulkheads, baffles or other shell stiffeners	Volume capacity of tank in gallons per inch of length			
	10 or less	Over 10 to 14	Over 14 to 18	Over 18
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of less than 70 inches, depending on spacing of shell stiffeners			
36 inches or less	0.087	0.087	0.096	0.109
Over 36 inches to 54 inches	.087	.097	.109	.130
Over 54 inches	.096	.109	.130	.151
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 70 inches or more, but less than 90 inches, depending on spacing of shell stiffeners			
36 inches or less	0.087	0.096	0.109	0.130
Over 36 inches to 54 inches	.096	.109	.130	.151
Over 54 inches	.109	.130	.151	.173
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 90 inches or more, but less than 125 inches, depending on spacing of shell stiffeners			
36 inches or less	0.096	0.109	0.130	0.151
Over 36 inches to 54 inches	.109	.130	.151	.173
Over 54 inches	.130	.151	.173	.194
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 125 inches or more, depending on spacing of shell stiffeners			
36 inches or less	0.109	0.130	0.151	0.173
Over 36 inches to 54 inches	.130	.151	.173	.194
Over 54 inches	.151	.173	.194	.216

§ 78.326–12 *Joints*—(a) *Method of joining.* All joints in and to tank shells, head and bulkheads shall be welded.

(b) *Strength of joints.* All welded aluminum joints shall be made in accordance with recognized good practice, and the efficiency of a joint shall not be less than 85 percent of the annealed properties of the material in question. Aluminum alloys for high-strength welded construction shall be joined by an inert gas arc welding process using filler metals R–GR40A, E–GR40A (5154 alloy) or R–GM50A, E–GM50A (5356 alloy) conforming to American Society of Testing Materials Specification No. B285–54T (American Welding Society Specification No. A5, 10–54T). Compliance with this requirement shall be determined by preparing from materials representative of those to be used in tanks subject to this specification and by the same technique of fabrication, two (2) test specimens conforming to figure as shown below and testing them to failure in tension. One pair of test specimens may represent all the tanks to be made of the same combination of materials, by the same technique of fabrication, and in the same shop, within six (6) months after the tests on such samples have been completed.



TENSILE SPECIMEN

§ 78.326–13 *Tank outlets.* (a) Outlet fixtures of tanks shall be substantially made and attached to the tank in such a manner as to prevent breakage at the outlet point.

§ 78.326–14 *Bulkheads, baffles and ring stiffeners*—(a) *When bulkheads not required.* The bulkhead requirement in subparagraph (b) of this section does not apply to any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than 80 percent (80%) full or in which no compartment of the tank is ever loaded less than 80 percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point. Flat bulkheads and baffles without reinforcement not permitted.

(b) *When bulkheads required.* Except as provided in paragraph (a) of this section every cargo tank having a total capacity in excess of 1,800 gallons shall be divided by bulkheads into compartments, none of which shall exceed 1,200 gallons. Each bulkhead required by this paragraph shall be of the same minimum strength as is required elsewhere in this specification for tank heads.

(c) *Double bulkheads.* Tanks with compartments carrying flammable liquids of different shipping names or with compartments containing flammable or poisonous liquids, class B and liquids not so classified by the regulations, shall be provided with an air space between compartments. This air space shall be arranged for venting and be equipped and maintained with drainage facilities operative at all times.

(d) *Baffles or shell stiffeners.* (1) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.). Ring stiffeners shall be continuous around the circumference of the tank shell and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0180*L*.[1]
Over 42 inches to 60 inches	0.0280*L*.[1]
Over 60 inches to 96 inches	0.0400*L*.[1]

[1] *L* is the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

§ 78.326-15 *Tank vents.* (a) Each tank or tank compartment shall be provided with a vacuum and pressure operated vent with a minimum effective opening of forty-four hundreds of a square inch (0.44 sq. in.), and shall also be provided with an emergency venting facility so constructed as to provide a minimum free-venting opening having a net area in square inches equal to 1.25 plus 0.0025 times the capacity of the tank or compartment in gallons. If the emergency venting facility operates in response to elevated temperatures, the critical temperature for such operation shall not exceed two hundred degrees Fahrenheit (200° F.).

§ 78.326-16 *Valve and faucet connections.* (a) All draw-off valves or faucets of tanks and compartments shall have discharge ends threaded, or be otherwise so designed as to insure in every instance a tight connection with the hose extending to the storage fill pipe.

§ 78.326-17 *Emergency discharge control.* (a) Each tank or tank compartment of a bottom-discharge tank shall be equipped with a reliable and effective shut-off valve located inside the shell of the tank or tank compartment in the tank or compartment outlet. The operating mechanism for such valve or valves shall be provided with a secondary closing mechanism remote from tank filling openings and discharge faucets, for operation in the event of fire or other accident. Such control mechanism shall also be provided with a fusible section which will cause the valve to close automatically in case of fire, and the critical temperature for the fusing of such section shall not exceed two hundred degrees Fahrenheit (200° F.).

§ 78.326-18 *Shear section.* (a) There shall be provided between each shut-off valve seat and discharge faucet a shear section which will break under strain, unless the discharge piping is so arranged as to afford equivalent protection, and leave the shut-off valve seat intact in case of accident to the discharge faucet or piping.

§ 78.326-19 *Protection of valves and faucets.* (a) Draw-off valves and faucets projecting beyond the frame, or if the vehicle be frameless, beyond the shell, at the rear, shall be adequately protected by steel bumpers or other equally effective devices, against collision.

§ 78.326-20 *Overturn protection.* (a) All closures for filling openings shall be protected from damage in the event of overturning of the motor vehicle by being enclosed within the body of the tank or dome attached thereto or by the use of suitable metal guards securely attached to the tank or the frame of the motor vehicle. Protection shall also be provided for any protruding or projecting fitting or appurtenance by means of adequate metal guards. The calculated load for the protective devices shall be the weight of the tank motor vehicle with the tank full of water, at one "g" deceleration. If the overturn protection is so constructed as to permit accumulation of liquid on the top of the tank, it shall not be provided with drainage facilities which will permit drainage at or near the front of the tank.

§ 78.326-21 *Tank supports.* (a) The distance from a tank support to the nearest bulkhead, baffle, or other shell stiffener, shall not exceed forty (40) times the thickness of the tank shell at the point of support.

§ 78.326-22 *Anchoring of tank.* (a) Adequate hold-down devices shall be provided to anchor each cargo tank in a suitable manner that will not introduce undue concentration of stresses and shall be built to withstand loadings in any direction equal to the weight of the tank and attachments when filled with water. These devices on vehicles with frames shall incorporate turnbuckles or similar positive action devices drawing the tank down tight on the frame of the motor vehicle.

(b) *Stops and anchors.* Suitable stops and anchors shall be attached to the motor vehicle and the tank to prevent movement between them due to starting, stopping and turning. These stops or anchors shall be installed so as to be readily accesible for inspection and maintenance except that lagging for lagged tanks is permitted to cover such stops and anchors.

(c) *Anchoring integral tanks.* Whenever any cargo tank is so designed and constructed that the cargo tank constitutes, in whole or in part, the stress member used in lieu of a frame, then such cargo tanks shall be designed so as to successfully and adequately withstand the stresses thereby imposed in addition to those otherwise imposed on the tank.

§ 78.326-23 *Pumps.* (a) Liquid pumps, whenever used, must be of suitable design, adequately protected against breakage by collisions, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

7. In § 78.330-8 amend paragraph (a) (15 F. R. 8555, Dec. 2, 1950) to read as follows:

§ 78.330 *Specification MC 310; cargo tanks.*

§ 78.330-8 *Must comply with A. S. M. E. Code.* (a) Tanks built under this specification shall be designed and constructed in accordance with the A. S. M. E. Code for Unfired Pressure Vessels, 1949, 1950, 1951, or 1952 editions, no revisions, which is hereinafter referred to as "the Code".

8. In § 78.331-8 amend paragraph (a); in § 78.331-9 amend paragraph (a) (18 F. R. 6783, 6784, Oct. 27, 1953) to read as follows:

§ 78.331-*Specification MC 311; cargo tanks.*

§ 78.331-8 *Design requirements*—(a) *A. S. M. E. Code construction.* Cargo tanks built of ferrous materials under this specification that are unloaded by pressure must be built of welded construction in accordance with the A. S. M. E. Code for Unfired Pressure Vessels, 1949, 1950, 1951, or 1952 editions—no revisions, except that wherein the Code specifies both minimum and maximum limits of tensile value of materials, the maximum limits need not apply. Such tanks shall not have head, bulkhead, baffle or shell thicknesses less than that specified in paragraphs (c) and (d) of this section, nor shall the spacing of bulkheads, baffles, or shell stiffeners exceed that specified in those sections.

§ 78.331-9 *Materials.* * * *

(a) *A. S. M. E. Code materials.* Cargo tanks required to comply with the A. S. M. E. Code for Unfired Pressure Vessels must be manufactured of materials authorized by the Code except that wherein the Code specifies both minimum and maximum limits of tensile value of materials, the maximum limits need not apply.

Section, Paragraph, and Reason for Amendment

71.8 (f) (1): To insure safe use of large containers.
72.5 (a) Commodity List: Makes additions, changes, and cancellations to keep commodity list on a current basis.
73.21 (d): To provide adequate restrictions on shipping certain cigarette lighters and self-lighting cigarettes.
73.31 (a): Service trials no longer required account fusion welding acceptable.
73.31 (a): table: Provides for the alternate use of spec. 105A100-W and 105A100AL-W tank cars.
73.31 (a) table, Note 12: Provides for the upgrading of spec. 105A100-W and 105A100-AL-W tank cars.
73.31 (f): Provides certificate that altered tank cars comply with a given specification.
73.31 (g) (10): Indicates that tank car tanks must be retested in accordance with the test pressure under which they were fabricated and classified.
73.31 (h): Clarification.
73.92 (d): Removes certain restrictions against shipping jet thrust units by rail express.
73.93 (f) (1): Requires marking of outside container to coincide with commodity description.
73.135 (a) (9): Authorizes the use of spec. MC 304 tank motor vehicles for certain flammable chlorosilanes.
73.141 (a) (9): Authorizes certain cylinders for various mercaptans.
73.141 (b): Exempts necessity to regulate limited amounts of warning or odorizing devices.
73.153 (c) (65), (66), (67): Clarifies that certain hafnium metal products and dimethylhexane dihydroperoxide are regulated.
73.157 (a): Provides packaging requirements for the transportation of dimethylhexane dihydroperoxide, wet.

73.158 (a): Provides packaging requirements for the transportation of dimethylhexane dihydroperoxide, dry.
73.158 (a) (3): Authorizes greater gross weight of package containing certain peroxides.
73.187 (a) (1): Clarifies that inside metal containers for peroxide of sodium must be airtight.
73.221 (a) (2), (3): Authorizes the use of metal inside containers for certain liquid peroxides.
73.235 (a): Coincides the commodity name with the description in § 72.5.
73.244 (c) (11): Makes the commodity name uniform with the description in § 72.5.
73.272 (f) (3), (i) (5), (6): The provisions of paragraphs (i) (5), and (6) are now in paragraphs (f) (2) and (3), respectively, for consistency.
73.273 (a) (5): Authorizes spec. MC 310 and MC 311 tank motor vehicles for the transportation of stabilized sulfur trioxide.
73.281 Heading and (a): Makes the commodity name uniform with the description in § 72.5.
73.306 (c) (1): Authorizes the transportation of refrigerant gases in spec. 2P inside metal containers not equipped with safety devices.
73.308 (a) table: Authorizes the use of spec. 41 cylinder for dichlorodifluoromethane.
73.372 Heading and (a): Makes the commodity name uniform with the description in § 72.5.
73.392 (c): Provides certain exemptions from the regulations for salts of natural uranium and thorium.
74.532. (j) (1): Provides for the shipment of a limited amount of radioactive materials.
74.586 (h): Provides distance charts for the safe handling of radioactive materials by rail freight.
75.655 (j) (2): Corrects a printing error.
78.55-2 (a): Authorizes the tubing manufacturer, cylinder manufacturer, or qualified agency to conduct pressure test on spec. 4B240ET cylinders.
78.165-8 (a) table and footnote 3: Authorizes spec. 14 wooden box to be constructed with hand-holes when used for certain high explosives.
78.168-3 (b): Reason for § 78.165-8 applies also to spec. 15A wooden box.
78.185-9 (b): Reason for § 78.165-8 applies also to spec. 16A wooden box.
78.209-8 (a) (2) Note 1: Authorizes hand-holes in full depth telescope type spec. 12H fiberboard box.
78.219-7 (b): Authorizes hand-holes in full depth telescope type spec. 23H fiberboard box.
78.281-21 (a) (1): Corrects an omission.
78.282-20 (a) (1): Corrects an omission.
78.299-8 (a) and (b): Authorizes bottom washout nozzle to be riveted as well as fusion-welded on spec. 103A-N-W tank car.
78.321-12 (a) Table I heading, and (b) Table III heading: Provides minimum thickness for ring stiffeners on spec. MC 300 cargo tanks.
78.321-13 (a): Authorizes the combination of stainless steel with mild and high-tensile steels for the construction of spec. MC 300 cargo tanks.
78.321-18 (a): Clarifies the condition under which bulkheads are not required for cargo tank.
78.321-18 (b), (b) (2), (b) (6): Provides requirements for the optional use of ring stiffeners in lieu of baffles.
78.322-12 Heading and (a) table: Provides minimum thickness for ring stiffeners and prohibits use of flat heads without reinforcement in the construction of spec. MC 301 cargo tanks.
78.322-18 (a): Clarifies the conditions under which bulkheads are not required for cargo tank.
78.322-18 (b), (b) (2), (b) (6): Provides requirements for the optional use of ring stiffeners in lieu of baffles.
78.323-12 Heading and (a) table: Provides minimum thickness for ring stiffeners and prohibits use of flat heads without reinforcement in the construction of spec. MC 302 cargo tanks.
78.323-18 (a): Clarifies the conditions under which bulkheads are not required for cargo tank.
78.323-18 (b), (b) (2), (b) (6): Provides requirements for the optional use of ring stiffeners in lieu of baffles.
78.324-12 (a) Table 1: Provides minimum thickness for baffles and ring stiffeners; prohibits use of flat heads without reinforcement in the construction of spec. MC 303 cargo tanks.
78.324-17 (a): Clarifies the conditions under which bulkheads are not required for cargo tank.
78.324-17 (b), (b) (2), (b) (6): Provides requirements for the optional use of ring stiffeners in lieu of baffles.
78.325-8 (d)—1st and 3d tables: Provides minimum thickness for ring stiffeners for spec. MC 304 cargo tanks.
78.325-9 Heading and (d): Provides requirements for the optional use of ring stiffeners in lieu of baffles.
78.325-14 (a), (b): Authorizes ah alternate means of satisfying the safety relief devices requirements.
78.326 (entire section): Provides for the construction of new spec. MC 305 for the transportation of flammable liquids and poisonous liquids, class B.
78.330-8 (a): Provides for the construction of spec. MC 310 cargo tank under later editions of the A. S. M. E. Code for Unfired Pressure Vessels.
78.331-8 (a): Exempts spec. MC 311 cargo tanks from the Code requirements pertaining to the maximum limits of tensile value of materials.
78.331-9 (a): Same as § 78.331-8.

[F. R. Doc. 57-8649; Filed, Oct. 23, 1957; 8:45 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

UNIONVILLE SALE CO.

PROPOSED POSTING OF STOCKYARD

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the Unionville Sale Co., Unionville, Missouri, is a stockyard as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 202), and should be made subject to the provisions of the act. Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), proposes to issue a rule designating the stockyard named above as a posted stockyard subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D. C., this 18th day of October 1957.

[SEAL] DAVID M. PETTUS,
Director,
Livestock Division,
Agricultural Marketing Service.

[F. R. Doc. 57-8772; Filed, Oct. 23, 1957; 8:51 a. m.]

Commodity Stabilization Service

1958 CROP SUGAR BEETS

NOTICE OF HEARINGS ON WAGES AND PRICES AND DESIGNATION OF PRESIDING OFFICERS

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of section 301 of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U. S. C. Sup. 1131), and in accordance with the rules of practice and procedure applicable to wage and price proceedings (7 CFR 802.1 et seq.), notice is hereby given that public hearings will be held as follows:

At Detroit, Michigan, December 3, 1957 in Room 859, Federal Building, at 10:00 a. m.;

At Fargo, North Dakota, December 6, 1957 in the Student Lounge, Library Building, North Dakota Agricultural College, at 10:00 a. m.;

At Billings, Montana, December 9, 1957 in the Roosevelt School Building, 4th Avenue North at 23d Street, at 10:00 a. m.;

At Salt Lake City, Utah, December 11, 1957 in Room 230, Federal Building, at 10:00 a. m.;

At Greeley, Colorado, December 13, 1957 in the Camfield Hotel, at 10:00 a. m.

The purpose of these hearings is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1), pursuant to the provisions of section 301 (c) (1) of the act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugar beets in regions other than the State of California, southwestern Arizona, southern Oregon and western Nevada, for the 1958 crop on farms with respect to which applications for payments under the act are made, and (2), pursuant to the provisions of section 301 (c) (2) of the act, fair and reasonable prices for the 1958 crop of sugar beets in regions other than those noted above to be paid under purchase or toll agreements by producers who process sugar beets grown by other producers and who apply for payments under the act.

Exhibit A set forth below contains proposed provisions to be included in the determination applicable to the 1958 crop. Attached to Exhibit A is an explanatory statement regarding the proposed provision.

In order to obtain the best possible information, the Department requests that all interested parties appear at the hearing to express their views and to present appropriate data with respect to all points relative to the subject matter of the hearings and especially with regard to the proposals in Exhibit A.

The hearings after being called to order at the times and places mentioned herein, may be continued from day to day within the discretion of the presiding officers and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearings by the presiding officers.

A. A. Greenwood, Ward S. Stevenson, and William N. Garrott are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearings.

Issued this 18th day of October 1957.

[SEAL] LAWRENCE MYERS,
Director,
Sugar Division, CSS.

EXHIBIT A

PROPOSED FAIR AND REASONABLE WAGE RATES FOR PERSONS EMPLOYED IN THE PRODUCTION, CULTIVATION, OR HARVESTING OF THE 1958 CROP OF SUGAR BEETS IN REGIONS OTHER THAN THE STATE OF CALIFORNIA, SOUTHWESTERN ARIZONA, SOUTHERN OREGON, AND WESTERN NEVADA

(a) *Requirements.* A producer of sugar beets in regions other than the State of California, southwestern Arizona, southern Oregon, and western Nevada shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm, in the production, cultivation, or harvesting of the 1958 crop shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker but after the beginning of work on the 1958 crop of sugar beets or the date of publication of this section in the FEDERAL REGISTER, whichever is later, not less than the following:

NOTE: The piecework rates used herein are based on the rates applicable to the 1957 crop and are solely for the purpose of illustration. They are not to be considered as the actual rates to be applicable to the 1958 crop.

(i) *When employed on a time basis:*

(a) For thinning, hoeing or weeding: -- cents per hour.

(b) For pulling, topping or loading: -- cents per hour.

(ii) *When employed on a piecework basis for thinning, hoeing, weeding or harvesting.* The piecework rates for the operations of thinning, hoeing, weeding, pulling, topping or loading shall be those agreed upon between the producer and the worker: *Provided,* That the average hourly rate of earnings paid to each worker for each operation shall be not less than -- cents per hour for thinning, hoeing or weeding, and -- cents per hour for pulling, topping or loading, when computed on the basis of the total time employed on the farm for that operation: *Provided further,* That in lieu of agreed upon piecework rates with a minimum hourly guarantee of earnings to workers as provided above, the producer shall pay not less than the following piecework rates for the operations specified:

Hand labor operations and methods of cultivation	Wage district I: Michigan, Ohio, Illinois, Indiana, Wisconsin, Minnesota, Iowa, North Dakota (Eastern)	Wage district II: Colorado, Nebraska, South Dakota, Wyoming, Montana, North Dakota (Western) Utah, Idaho (Southern and Eastern), Kansas, New Mexico, Texas, Nevada (Northern)	Wage district III: Idaho (Western), Oregon (except Southern), Washington
First hoeing completely machine thinned fields or hoe-thinning only on fields with any type cultivation	$9.00	$9.50	$9.00
Hoe and finger thinning partially machine thinned fields	11.00	11.50	11.00
Hoe and finger thinning fields which have not been machine thinned	14.00	14.50	14.00
First hoeing, except completely machine thinned fields	5.50	6.00	7.50
Second and each subsequent hoeing or weeding	3.50	4.00	6.00

Combined operations. A written agreement between the producer and the worker is required in instances where a combined rate for "summer work" is agreed upon. In such case, the rate for "summer work" regardless of the number of hoeings or weedings required, shall be the sum of the applicable thinning, hoeing, and weeding rates specified above. In the absence of a written agreement, the rate for each operation performed by the worker shall be the applicable rate specified above.

Wide row planting. The above thinning, hoeing, or weeding rates may be reduced by not more than the indicated percentages for the following row spacings: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent.

(iii) *When employed on a time or piecework basis for other operations.* For operating mechanical equipment, irrigating, and all other operations in the production, cultivation, or harvesting of sugar beets for which a rate is not specified herein, the rate shall be as agreed upon between the producer and the worker.

Statement. The foregoing provisions set forth proposed wage rate requirements for the 1958 crop of sugar beets other than in California and adjacent regions.

Wage determinations have been issued for the sugar beet area beginning with the harvesting of the 1937 crop. The early determinations provided specific piecework rates for a number of wage districts, the rate differentials between such districts having been based upon historical wage patterns, differences in labor supply sources, man-hour requirements and cultural practices, and other pertinent factors. Historically, the piecework method of payment has been used in the sugar beet area due to the nature of the work and the types of workers available. Since 1941 significant changes have occurred in the elements which are considered in developing a piecework rate structure. Among the more important of these changes was the development of processed seed, mechanical harvesting, increased use of mechanical thinning of sugar beets, changes in methods of cultivation, variations in the methods of performing hand labor operations and changes in the labor supply pattern.

Throughout this period efforts were made to recognize in the piecework rate scale of the determination the effects on wage rates of the many changes which occurred. As a result, the wage determinations of recent years have become complex and subject to misinterpretation of producers and workers.

Intensive studies have been made to ascertain a more practical approach to the problem of wage determinations within the concepts of the wage provisions of the Sugar Act. These studies have revealed that:

(a) Provision for the piecework method of payment should be continued because of preference for such method by many producers and workers;

(b) Producers and workers have assumed greater responsibility in negotiating wage rates;

(c) Greater flexibility is needed in the piecework rate structure to give increased recognition to changes in hand labor operations and improvements in agricultural practices;

(d) Man-hour requirements for the several hand labor operations indicate less variation throughout the sugar beet producing area than in former years;

(e) The labor supply pattern has become more uniform throughout the sugar beet area.

Accordingly, these proposed provisions have been developed to recognize current conditions. The following changes are proposed as compared with the 1957 crop determination:

1. The number of wage districts has been reduced from 8 to 3. The reduction in the number of wage districts is based upon the 3 significant geographical regions of the sugar beet area other than California. Studies indicate that man-hour requirements for the several operations are similar for the states or parts of states within each of the three wage districts.

2. The reference that rates for certain operations are applicable to fields planted with processed seed is eliminated and the specific rate for certain operations applicable to fields planted with whole seed has been excluded. Most sugar companies do not issue whole seed and it is expected that only processed seed or mono-germ seed will be planted for the 1958 and subsequent crops.

3. The separate rate for first hoeing following hoe thinning only has been deleted. The man-hour requirements for this operation do not appear to be substantially different in most districts from those for first hoeing following hoe and finger thinning.

4. The qualifications applicable to the rate for first hoeing following complete machine thinning have been omitted. These qualifications appear to be no longer necessary in view of advances in machine thinning and changes in worker requirements.

5. The rate reductions applicable to hoeing and weeding where cross-cultivation is performed prior to such operations have been eliminated. The practice of cross-cultivation prior to hoeing and weeding has been discontinued by most producers.

6. The piecework rate for the operations of first hoeing completely machine thinned fields and hoe-thinning only on fields with any type cultivation, have been combined.

These operations are similar in regard to method of work and man-hour requirements.

7. Producers and workers may agree upon the piecework rate for any hand labor operation of thinning, hoeing or weeding provided that the earnings of the worker are not less than the hourly rate specified for the operation involved.

In summary the proposed wage rate provisions provide for the three separate wage districts, specific piecework rates for stated operations of thinning, hoeing or weeding sugar beets and permit the use of the hourly rate of payment, or agreed-upon piecework rates with a minimum hourly guarantee of earnings for workers, for any hand labor operation in the thinning, hoeing, weeding, pulling, topping or loading of sugar beets. The piecework rates specified in this proposal are based on the rates provided in the 1957 determination and reflect the adjustments that would appear to be equitable. The effect of these adjustments would be nominal particularly in view of the fact that the rates paid have exceeded the determination rates in many regions.

It is anticipated that the hourly rates and the provision for agreed-upon piecework rates for thinning, hoeing, and weeding will provide the necessary flexibility in the wage determination to meet changes in types of seed planted and changes in cultivation practices or in methods of performing hand labor operations, and will provide a means for reducing labor costs for those producers who prepare, plant, and cultivate their fields in the most efficient manner. The proposed provisions also have the effect of placing greater responsibility on producers and workers for the development of agreed-upon wage rates.

No changes are proposed in other provisions of the wage determination relating to compensable working time, rate applicability and workers covered, proof of compliance, subterfuge, and claims for unpaid wages.

[F. R. Doc. 57-8729; Filed, Oct. 23, 1957; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OREGON

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

OCTOBER 17, 1957.

The United States Forest Service, Department of Agriculture, has filed an application, Serial No. Oregon 05337, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws but not including the mineral leasing laws. The withdrawal, if made, will be subject to valid existing rights. The applicant desires the land for the Bald Ridge Administrative Site.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1001 NE. Lloyd Blvd., P. O. Box 3861, Portland 8, Oregon.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

WILLAMETTE MERIDIAN, OREGON

T. 11 S., R. 40 E.,
Sec. 23: SW¼SW¼, W½SE¼SW¼
Sec. 26: NW¼NW¼, W½NE¼NW¼.
Baker County, 120.00 acres.

VIRGIL T. HEATH,
State Supervisor.

[F. R. Doc. 57-8738; Filed, Oct. 23, 1957; 8:45 a. m.]

IDAHO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

OCTOBER 16, 1957.

Bureau of Sport Fisheries and Wildlife has filed an application, Serial No. Idaho 08499, for the withdrawal of the lands described below, from all forms of appropriation under the Public Land Laws including the Mining Laws, but not the Mineral Leasing Laws. The applicant desires the land for use in connection with the Snake River National Wildlife Refuge.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 2237, Boise, Idaho.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

Thirteen unsurveyed islands on the Idaho side of the Snake River extending from Homedale downstream to Olds Ferry in the following subdivisions:

BOISE MERIDIAN, IDAHO

T. 4 N., R. 5 W.,
Sec. 29.
T. 7 N., R. 5 W.,
Sec. 29.
T. 9 N., R. 5 W.,
Secs. 2 and 15.
T. 10 N., R. 5 W.,
Secs. 17 and 20.
T. 5 N., R. 6 W.,
Secs. 14, 15, 22 and 23.
T. 6 N., R. 6 W.,
Secs. 26 and 27.
T. 11 N., R. 6 W.,
Secs. 19, 20, 35 and 36.

The area includes approximately 264 acres.

NOLAN F. KEIL,
Acting State Supervisor.

[F. R. Doc. 57-8739; Filed, Oct. 23, 1957; 8:45 a. m.]

IDAHO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

OCTOBER 16, 1957.

Bureau of Sport Fisheries and Wildlife has filed an application, Serial No. Idaho 06678, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws and general mining laws, but not the Mineral Leasing Laws. The applicant desires the land for the Grandview Snake River Wildlife management area.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 2237, Boise, Idaho.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

T. 5 S., R. 3 E.,
Sec. 4, Lot 5;
Sec. 9, Lots 1, 4, N½NE¼, NE¼SE¼, SE¼NE¼.

This area includes 291.60 acres.

NOLAN F. KEIL,
Acting State Supervisor.

[F. R. Doc. 57-8740; Filed, Oct. 23, 1957; 8:45 a. m.]

ALASKA

TALKEETNA TOWNSITE; NOTICE OF SALE

Notice is hereby given that there will be offered at public sale to the highest bidder at 1:00 p. m. on November 18, 1957, in the Fairview Inn, Talkeetna, Alaska, the lots listed at the end of this notice.

These lots will not be sold for less than the appraised price. No bid exceeding that amount will be accepted unless made in multiples of $5. Bids may be offered by all who may care to do so, and when there will be no further offers, the lots will be declared sold to the last and highest bidder.

Full payment may be made in cash, postal money order, or bank draft at the date of sale. On all bids, a minimum of $100 will be required at time of sale. The balance must be paid to the Manager, Anchorage Land Office, within three months from date of sale. A charge of 4 percent will be made on the deferred balance. If any person who has made partial payment for a lot fails to make succeeding payment, the money theretofore paid and his rights to the lot will be forfeited.

The officer conducting the sale is authorized to reject any and all bids, to suspend, adjourn, or postpone the sale of the lots, and to reappraise the lots at the time of sale or after the sale has been adjourned or closed. If the lots remain unsold, they may, at the discretion of the Superintendent of Sales, be sold at private entry for the appraised price. Lots, the rights to which have been declared forfeited for nonpayment of the succeeding installment, or for any other reason, shall be subject to private entry upon reappraisement at the sale price. All persons are warned against violation of the provisions of 18 U. S. C., 1860, prohibiting unlawful combinations or intimidation of bidders.

Following are the lots being offered for sale, the area embraced by each and the minimum acceptable bids for these lots:

Block 26:	
Lot 1, 31,000 square feet	$250.00
Lot 2, 31,000 square feet	200.00
Lot 5, 16,002 square feet	200.00
Lot 7, 31,000 square feet	200.00
Lot 8, 31,000 square feet	200.00
Lot 9, 31,000 square feet	250.00
Block 27:	
Lot 1, 32,550 square feet	150.00
Lot 2, 32,550 square feet	150.00
Lot 3, 32,550 square feet	250.00
Lot 4, 32,550 square feet	250.00
Lot 5, 32,550 square feet	150.00
Lot 6, 32,550 square feet	150.00
Block 28:	
Lot 1, 44,100 square feet	200.00
Lot 2, 44,100 square feet	200.00
Lot 3, 44,100 square feet	300.00
Block 29:	
Lot 1, 42,000 square feet	300.00
Lot 2, 42,000 square feet	250.00
Lot 3, 21,460 square feet	200.00

ROGER R. ROBINSON,
Superintendent of Sales,
Alaska Railroad Townsites.

[F. R. Doc. 57-8741; Filed, Oct. 23, 1957; 8:45 a. m.]

Bureau of Mines

ASSISTANT DIRECTOR—HELIUM

REDELEGATION OF AUTHORITY TO EXECUTE CONTRACTS FOR SALE, PRODUCTION, AND DISTRIBUTION

.1 *Redelegation of authority to execute contracts for sale of helium.* Pursuant to the authority delegated to the Director, Bureau of Mines by Secretary's Order No. 2302 of March 13, 1947 (12 F. R. 1840), as amended February 26, 1955, by Amendment No. 1 to Order 2302 (20 F. R. 1349), final authority to execute contracts for the sale of helium is hereby redelegated to the Assistant Director—Helium, except that where the Assistant Director—Helium or any official of the Bureau connected with the sale of helium has information or reason to believe that the helium is to be (1) exported; (2) used in airship flights to foreign countries; or (3) used for novel industrial purposes, the Assistant Director—Helium shall transmit to the Secretary of the Interior, through the Director, Bureau of Mines, all relevant papers, with any evidence that he or any officials of the Bureau connected with the sale of helium may have concerning the proposed use of the helium and the prospective purchaser or purchasers. In addition, he shall specify whether he believes the provision for liquidated damages referred to in 30 CFR 1.14 (c) should be invoked, and if so, the amount of such damages. The Assistant Director—Helium may, by written order published in the FEDERAL REGISTER, redelegate to the Chief, Helium Operations the authority granted in this paragraph.

.2 *Redelegation of authority to execute contracts for the production and distribution of helium gas.* Pursuant to the authority delegated to the Director, Bureau of Mines by Secretary's Order No. 2785 of January 18, 1955 (20 F. R. 552), the Assistant Director—Helium, is hereby redelegated the authority to make negotiated purchases or contracts for supplies and services necessary for the production and distribution of helium gas, provided that the facts are such as to bring the purchase or contract in question within the provisions of paragraphs (1), (2), (3), (4), (9), (10), (12), (13), or (14), of section 302 (c) of the Federal Property and Administrative Services Act of 1949 as amended (41 U. S. C., Sec. 251 et seq.), and to make written determinations that the facts are such as to bring the purchase or contract in question within the provisions of paragraphs (1), (2), (3), (4), (9), (13), or (14) of section 302 (c) of the act.

The above authority may not be redelegated and is subject to the fiscal limitations set forth in paragraph 205.2.4A (1) of the Manual (21 F. R. 1205).

THOS. H. MILLER,
Acting Director,
Bureau of Mines.

[F. R. Doc. 57-8756; Filed, Oct. 23, 1957; 8:48 a. m.]

Fish and Wildlife Service

[Director's Order No. 2]

DESIGNATED OFFICIALS OF BUREAU OF COMMERCIAL FISHERIES

DELEGATION OF AUTHORITY FOR NEGOTIATED PURCHASES AND CONTRACTS

OCTOBER 18, 1957.

SECTION 1. *Delegation.* The officers and employees designated in this section are severally authorized, subject to the provisions of section 2 of this order, to exercise the following authority under the Federal Property and Administrative Services Act of 1949, as amended (41 U. S. C. 252 et seq.), delegated by the Administrator of General Services to the Secretary of the Interior:

(a) Except as provided in section 2 of this order, the authority contained in the delegation dated January 15, 1951 (16 F. R. 515), to negotiate, without advertising, purchases and contracts of the supplies and services described in this paragraph may be exercised by the officers and employees designated below in relation to the respective class of supplies or services, limited to the amounts indicated in each case, when it is determined that the facts are such as to bring the particular purchase or contract within the cited provisions of the act.

(1) Subsection 302 (c) (4), to procure personal and professional services of naval architects and marine engineers.

(i) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries; Chief, Division of Administration, and Chief, Branch of Finance and Procurement, Office of the Commissioner, Fish and Wildlife Service, unlimited as to amount.

(ii) *Regional Offices.* Regional Directors and Assistant Regional Directors; and Administrative Officers and Property Management Officers, Office of the Commissioner, Fish and Wildlife Service, $100,000.

(iii) *Other Offices.* Director, Assistant Director, Administrative Officer and Assistant Administrative Officer, Pacific Oceanic Fishery Investigations, $100,000.

(2) Subsection 302 (c) (5), to procure services to be rendered by any university, college, or other educational institution.

(i) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries, unlimited as to amount.

(3) Subsection 302 (c) (7), to procure medicines and medical supplies required to be furnished to the inhabitants of the Pribilof Islands.

(i) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries; Chief, Division of Administration, and Chief, Branch of Finance and Procurement, Office of the Commissioner, Fish and Wildlife Service, unlimited as to amount.

(ii) *Regional Offices.* Regional Director, and Assistant Regional Director, Region 1; and Administrative Officer and Property Management Officer, Region 1, Office of the Commissioner, Fish and Wildlife Service, $100,000.

(iii) *Other Offices.* General Manager, Pribilof Islands Reservation, $5,000.

(4) Subsection 302 (c) (9), to procure perishable and semiperishable foods.

(i) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries; Chief, Division of Administration, and Chief, Branch of Finance and Procurement, Office of the Commissioner, Fish and Wildlife Service, unlimited as to amount.

(ii) *Regional Offices.* Regional Directors and Assistant Regional Directors; and Administrative Officers and Property Management Officers, Office of the Commissioner, Fish and Wildlife Service, $100,000.

(iii) *Other Officers.* Director, Assistant Director, Administrative Officer and Assistant Administrative Officer, Pacific Oceanic Fishery Investigations, $100,000; all project leaders in charge of fish cultural stations, laboratories, experimental projects or vessels, $10,000; and General Manager, Pribilof Islands Reservation, $5,000.

(5) Subsection 302 (c) (10) to procure experimental, developmental, or research work or the manufacture or furnishing of supplies for experimentation, development, research, or test in connection with research and development programs.

(i) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries, unlimited as to amount: *Provided,* That no contract may be entered into pursuant to this subparagraph until the written determination required under subsection 302 (c) (10) and section 307 (b) of the act has been made either by the Director or Assistant Director of the Bureau of Commercial Fisheries, when the contract will require the expenditure of $25,000 or less; or until the written determination so required has been made by the Secretary of the Interior when the contract will require the expenditure of more than $25,000.

(b) Except as provided in section 2 of this order, the authority contained in the delegation dated April 21, 1955 (20 F. R. 2837), to negotiate, without advertising, under subsection 302 (c) (12), contracts for the purchase of outboard motors for use in Alaska may be exercised by the officers and employees designated in this paragraph in amounts not exceeding the monetary limits indicated in each case.

(1) *Headquarters Organization.* Assistant Director, Bureau of Commercial Fisheries; Chief, Division of Administration, and Chief, Branch of Finance and Procurement, Office of the Commissioner, Fish and Wildlife Service, unlimited as to amount.

(2) *Regional Offices.* Regional Directors and Assistant Regional Directors, Regions 1 and 5; and Administrative Officers and Property Management Officers, Regions 1 and 5, Office of the Commissioner, Fish and Wildlife Service, $100,000.

SEC. 2. *Limitations; exercise of authority.* (a) The authority granted by section 1 of this order does not include authority to make the written determination required by subsection 302 (c) (12) of the act irrespective of the amount of expenditure involved; nor authority to make the written determination required by subsection 302 (c) (10) of the act when a contract pursuant to that subsection will require the expenditure of more than $25,000. Until any such determination has been made by the Secretary of the Interior, no officer or employee of the Bureau of Commercial Fisheries shall enter into such a contract pursuant to subsections 302 (c) (10) or 302 (c) (12) of the act.

(b) The authority granted by section 1 of this order shall be exercised in accordance with applicable limitations and requirements in the act and in accordance with the policies, procedures and controls prescribed by the General Services Administration.

SEC. 3. *Redelegation.* The authority granted by this order may not be redelegated.

(Secretary's Order No. 2825; Commissioner's Order No. 3, 22 F. R. 8126)

DONALD L. MCKERNAN,
Director,
Bureau of Commercial Fisheries.

[F. R. Doc. 57-8755; Filed, Oct. 23, 1957; 8:48 a. m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T. D. 54468]

FOREIGN CURRENCIES

RATES OF EXCHANGE FOR FINLAND MARKKA

OCTOBER 18, 1957.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Finland markka between September 16, 1957, and September 30, 1957.

The Federal Reserve Bank of New York has certified rates of exchange for the Finland markka during the period from September 16, 1957, to September 30, 1957, which vary by 5 per centum or more from the rate ($0.00435401) first certified by the Bank under the provisions of section 522 (c), Tariff Act of 1930, as amended (31 U. S. C. 372 (c)), for a day in the quarter beginning July 1, 1957, as published in T. D. 54392.

Wherever, in connection with merchandise exported on the dates listed, it is necessary for customs purposes to convert Finnish currency into currency of the United States such conversion shall be at the rates certified by the Bank, as herewith published:

Finland Markka:

September 16, 1957	[1] $0.00311756
September 17, 1957	[1] .00311878
September 18, 1957	[1] .00311878
September 19, 1957	[1] .00311878
September 20, 1957	[1] .00311878
September 23, 1957	[1] .00311634
September 24, 1957	[1] .00311807
September 25, 1957	[1] .00311807
September 26, 1957	[1] .00311807
September 27, 1957	[1] .00311807
September 30, 1957	[1] .00311807

[1] Nominal rate.

[SEAL] RALPH KELLY,
Commissioner of Customs.

[F. R. Doc. 57-8759; Filed, Oct. 23, 1957; 8:48 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8957]

WESTERN TRANSPORTATION CO., INC; ENFORCEMENT CASE

NOTICE OF HEARING

In the matter of Western Transportation Co., Inc., doing business as W. T. C. Airfreight Enforcement Proceeding.

Notice is hereby given that a hearing in the above-entitled proceeding is assigned to be held on December 2, 1957, at 10:00 a. m., e. s. t., in Room 2051, Temporary Building No. 5, 16th and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Dated at Washington, D. C., October 18, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-8773; Filed, Oct. 23, 1957; 8:51 a. m.]

[Docket No. 8727]

BLATZ AIRLINES, INC.; ENFORCEMENT PROCEEDING

NOTICE OF HEARING

In the matter of Blatz Airlines, Inc. Enforcement Proceeding.

Notice is hereby given that a hearing in the above-entitled proceeding is assigned to be held on November 5, 1957, at 10:00 a. m., e. s. t., in Room 1417, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Richard A. Walsh.

Dated at Washington, D. C., October 18, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-8774; Filed, Oct. 23, 1957; 8:51 a. m.]

[Docket No. 8619]

CALIFORNIA AIR CHARTER, INC., AND D. W. MERCER; ENFORCEMENT PROCEEDING

NOTICE OF HEARING

In the matter of California Air Charter, Inc. and D. W. Mercer Enforcement Proceeding.

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on November 19, 1957, at 10:00 a. m., e. s. t., in Room E-224, Temporary Building No. 5, 16th and Constitution Avenue NW., Washington, D. C., before Examiner Herbert K. Bryan.

Dated at Washington, D. C., October 18, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-8775; Filed, Oct. 23, 1957; 8:51 a. m.]

[Docket No. 8258 et al.]

INTRA-AREA CARGO CASE

NOTICE OF HEARING

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 401 and 1001 of said act, that a public hearing in the above-entitled proceeding will be held on October 30, 1957, at 10 a. m., e. s. t., in room E-224, Temporary Building 5, 16th Street and Constitution Avenue NW., Washington, D. C., before Examiner Herbert K. Bryan.

Without limiting the scope of the issues presented by the dockets consolidated for hearing, particular attention will be directed to the issue of whether the provisions in the certificates of public convenience and necessity of Slick Airways, Inc., and The Flying Tiger Line, Inc., prohibiting intra-area operations should be modified or removed.

Notice is further given that any interested person other than the parties of record desiring to be heard regarding the issues involved in this proceeding must file with the Civil Aeronautics Board on or before October 30, 1957, a statement setting forth the matters of fact or law on which he desires to be heard.

Dated at Washington, D. C., October 18, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-8776, Filed, Oct. 23, 1957; 8:52 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12220; FCC 57-1145]

REVISED TENTATIVE ALLOCATION PLAN FOR CLASS B FM BROADCAST STATIONS

NOTICE OF PROPOSED ALLOCATION

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. It is proposed to amend the Revised Tentative Allocation Plan for Class B FM Broadcast Stations in the following manner:

General area	Channels	
	Delete	Add
Tacoma, Wash	227	
Olympia, Wash	279	284
Centralia, Wash	284	289

3. The purpose of the proposed amendment is to make Channel 280, a Class A channel, available for assignment to a new station in Tacoma, Washington, as proposed in an application (File No. BPH-2282) filed by Thomas Wilmot Read.

4. Authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), and 207 (b) of the Communications Act of 1934, as amended.

5. Any interested party who is of the opinion that the proposed amendment should not be adopted or should not be adopted in the form set forth herein, may file with the Commission on or before November 29, 1957 a written statement or brief setting forth his comments. Comments in support of the proposed amendment also may be filed on or before that same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: October 16, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8771; Filed, Oct. 23, 1957; 8:51 a. m.]

[Docket No. 7634, etc.; FCC 57-1144]

ROBERT BURDETTE ET AL.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Robert Burdette, San Fernando, California, Docket No. 7634, File No. BP-4799; Charles R. Bramlett, Torrance, California, Docket No. 11978, File No. BP-9833; Latin-American Broadcasting Corporation, Monterey Park, California, Docket No. 11981, File No. BP-10811; Radio Orange County, Inc., Anaheim, California, Docket No. 12218, File No. BP-11236; Anaheim-Fullerton Broadcasting Co., Inc., Anaheim-Fullerton, California, Docket No. 12219, File No. BP-11242; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 16th day of October 1957;

The Commission having under consideration the above-captioned applications for construction permits for new standard broadcast stations to operate on 1190 kilocycles by Robert Burdette at San Fernando, California with a power of 5 kilowatts, daytime only; by Charles R. Bramlett at Torrance, California with a power of 250 watts, directional antenna, unlimited time; by Latin-American Broadcasting Corporation at Monterey Park, California with a power of 1 kilowatt, directional antenna, unlimited time; by Radio Orange County, Inc. at Anaheim, California with a power of 1 kilowatt, directional antenna, unlimited time; and by Anaheim-Fullerton Broadcasting Co., Inc. at Anaheim-Fullerton, California with a power of 1 kilowatt, directional antenna, unlimited time; and

It appearing that, by an Order released on April 10, 1957, the Commission designated for hearing in a consolidated proceeding the mutually exclusive applications herein of Robert Burdette, Charles R. Bramlett, and Latin-American Broadcasting Corporation; that, within ten days of said Order, Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc. filed, on April 12 and 15, 1957, respectively, applications which are mutually exclusive therewith and are entitled, therefore, to be consolidated in said hearing proceeding, pursuant to § 1.724 (b) of the Commission's rules; and

It further appearing that Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc. are legally, financially, technically, and otherwise qualified, except as may appear from the issues specified below, to construct and operate their proposed stations, but that operation of the stations as proposed would result in mutually destructive interference with each other and with the proposals herein by Robert Burdette, Charles R. Bramlett, and Latin-American Broadcasting Corporation; and

It further appearing that, in the event of a grant of the application of Radio Orange County, Inc., the construction permit should contain conditions that the permittee will take prompt corrective action necessary to eliminate any interference from harmonic or other spurious emissions to the FCC Monitoring Station at Santa Ana, California; and that, before program tests are authorized, Clifford Gill, 50.5 percent stockholder therein, will resign as Vice President of John Poole Broadcasting, Inc., licensee of Stations KBIG, Avalon, California, and KBIF, Fresno, California, in accordance with his statement to that effect in Exhibit 2 of this application; and

It further appearing that, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the instant five applicants were notified of the foregoing by letter dated July 18, 1957, and that Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc. were given thirty days in which to reply to said letter; and

It further appearing that timely replies were filed by Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc.; and

It further appearing that in a letter dated August 15, 1957 Anaheim-Fullerton Broadcasting Co., Inc. pointed out that no notification has been made of the directional antenna pattern for the proposed operation of Station XERP on 1190 kilocycles with a power of 50 kilowatts at Guadalajara, Jalisco, Mexico, submitted what it believes to be a reasonable directional pattern for the XERP proposal; claims that the proposals of Charles R. Bramlett and Radio Orange County, Inc. would not protect a station operating with said assumed directional pattern; and, therefore, requests that an issue be included in the instant hearing to determine whether said applications are in compliance with §§ 1.300 (b) and 3.28 (b) of the Commission's rules; that in a letter dated August 20, 1957, Radio Orange County, Inc. states, in substance, that the assumed pattern is purely speculative and without merit; and that we are of the opinion that said pattern assumed for XERP by Anaheim-Fullerton Broadcasting Co., Inc. is too speculative to serve as a basis for calculating interference to Station XERP's proposed operation or to include an issue as here requested by Anaheim-Fullerton Broadcasting Co., Inc.; and

It further appearing that, in a letter dated September 18, 1957, legal counsel for Charles R. Bramlett claims that Anaheim-Fullerton Broadcasting Co., Inc., in support of its request for dual city operation, has not made a satisfactory showing under § 3.30 of our rules that an unreasonable burden would result from being licensed to serve only one city; that dual city operation by Anaheim-Fullerton Broadcasting Co., Inc., "may be a material factor in resolving" the section 307 (b) issue in the instant hearing as to which of the cities here involved has the greatest need for a new radio facility; and asks that an issue be included in the hearing as to whether, in fact, an unreasonable burden would be placed on Anaheim-Fullerton Broadcasting Co., Inc., if it were to be located in one city only; that, in a reply dated September 20, 1957, legal counsel for Anaheim-Fullerton claims that Exhibit H-2 of its application "constitutes the prima facie showing required under § 3.30 (b) of the rules"; that the Commission, in its section 309 (b) letter of July 18, 1957 raised no question as to the showing and therefore, presumably, had already determined that it was sufficient; and that "Bramlett does nothing more than raise the question and presents no information whatsoever under oath to rebut the presentation made by applicant in its verified application"; and that, we are of the opinion that the showing made by Anaheim-Fullerton Broadcasting Co., Inc. in Exhibit H-2 of its instant application is sufficient, within the meaning of § 3.30 of our rules; and that, therefore, said request of Charles R. Bramlett should be denied; and

It further appearing that the cities of Anaheim and Fullerton are geographically contiguous; that the antenna sites proposed by Radio Orange County, Inc., and Anaheim-Fullerton Broadcasting Co., Inc. are less than two miles apart; and that although the proposals of Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc. will not provide service to identical areas, they will provide a substantial duplication of service areas so as to preclude further consideration of the provisions of section 307 (b) of the act relative to their respective station locations; and

It further appearing that, after consideration of the foregoing, we are of the opinion that a consolidated hearing proceeding on the applications herein is necessary;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, said applications of Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc. are consolidated in the hearing proceeding on the other applications herein, Docket No. 7634, et al.; and

It is further ordered, That this Order shall supersede, with respect to the issues only, the Commission's above-referenced Order released on April 10, 1957, in designating for hearing said applications of Robert Burdette, Charles R. Bramlett, and Latin-American Broadcasting Corporation; and that the issues in said hearing proceeding shall be as follows:

1. To determine the areas and populations which would receive primary service from each of the proposals herein, and the availability of other primary service to such areas and populations.

2. To determine whether the proposal by Charles R. Bramlett would involve objectionable interference with Station KEX, Portland, Oregon, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine whether the transmitter sites proposed by Robert Burdette and Charles R. Bramlett would be satisfactory.

4. To determine whether Robert Burdette is legally, financially, and otherwise qualified.

5. To determine whether the antenna systems proposed by Robert Burdette and Charles R. Bramlett would be a hazard to air navigation and whether Burdette's would otherwise be satisfactory.

6. To determine, in light of section 307 (b) of the Communications Act of 1934, as amended, which of the cities of San Fernando, Torrance, Monterey Park, and Anaheim-Fullerton, California has the greater need for a new radio facility.

7. To determine, in the event that pursuant to Issue 6, above, it is found that Anaheim-Fullerton, California, has the greatest need for a new radio facility, which of the operations proposed by Radio Orange County, Inc., and Anaheim-Fullerton Broadcasting Co., Inc., would better serve the public interest in light of the evidence adduced under the foregoing issues and record made with respect to the significant differences between said two applicants as to:

(a) The background and experience of each to own and operate its proposed station.

(b) The proposal of each with respect to the management and operation of its proposed station.

(c) The programming service proposed by each.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications herein should be granted.

It is further ordered, That specification of issues herein is without prejudice to whatever action the Commission may take on presently pending petitions to enlarge the issues in this proceeding as set forth in our above-referenced Order released on April 10, 1957; and

It is further ordered, That, in the event of a grant of the application of Radio Orange County, Inc., the construction permit shall include a condition requiring this permittee to take prompt corrective action to eliminate any interference from harmonic or other spurious emissions to the FCC Monitoring Station at Santa Ana, California; and shall, before program test authorization is granted, submit to the Commission sufficient evidence to show that Clifford Gill has severed all connection with John Poole Broadcasting, Inc., licensee of Station KBIG, Avalon, California, in accordance with a statement to that effect in Exhibit 2 of this application; and

It is further ordered, That the request of Anaheim-Fullerton Broadcasting Co., Inc. that an issue be included in the hearing as to whether the proposals of Radio Orange County, Inc. and Charles R. Bramlett are in compliance with §§ 1.300 (b) and 3.28 (b) of our rules is denied; and

It is further ordered, That the request of Radio Orange County, Inc. that issue be included in the hearing as to whether an unreasonable burden would result to Anaheim-Fullerton Broadcasting Co., Inc. from being licensed to operate in one city only is denied; and

It is further ordered, That to avail themselves of the opportunity to be heard, Radio Orange County, Inc. and Anaheim-Fullerton Broadcasting Co., Inc., pursuant to § 1.387 of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon a sufficient allegation of facts in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8766; Filed, Oct. 23, 1957; 8:50 a. m.]

[Docket No. 12179, etc.; FCC 57M-999]

RADIO ST. CROIX, INC., ET AL.

NOTICE CONTINUING HEARING CONFERENCE

In re applications of Radio St. Croix, Incorporated, New Richmond, Wisconsin, Docket No. 12179, File No. BP-10925; Florida East Coast Broadcasting Company, Inc., South St. Paul, Minnesota, Docket No. 12180, File No. BP-11170; Hennepin County Broadcasting Company, Golden Valley, Minnesota, Docket No. 12181, File No. BP-11341; for construction permits.

Notice is hereby given that the prehearing conference heretofore scheduled for October 25, 1957, is continued to Wednesday, November 20, 1957, at 10:00 a. m. in Washington, D. C.

Dated: October 15, 1957.

Released: October 15, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8767; Filed, Oct. 23, 1957; 8:50 a. m.]

[Docket No. 12206; FCC 57M-1010]

CHINOOK TELEVISION CO.

ORDER SCHEDULING PREHEARING CONFERENCE

In re application of Robert S. McCaw, tr/as Chinook Television Company, Yakima, Washington, Docket No. 12206, File No. BPCT-2206; for construction permit to replace expired permit.

It is ordered, This 21st day of October 1957, that a hearing conference in the above-entitled proceeding will be held in the Offices of the Commission, Washington, D. C., at 11:00 a. m., Tuesday, October 29, 1957.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8768; Filed, Oct. 23, 1957; 8:50 a. m.]

[Docket Nos. 12209, 12210; FCC 57M-1004]

DAVID M. SEGAL ET AL.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of David M. Segal, Boulder, Colorado, Docket No. 12209, File

No. BP-10427; Kenneth G. Prather and Misha S. Prather, Boulder, Colorado, Docket No. 12210, File No. BP-11289; for construction permits.

It is ordered, This 17th day of October 1957, that a prehearing conference, in accordance with § 1.813 of the rules, will be held in the above-entitled matter at 10:00 A. M., November 21, 1957, in the Commission's offices at Washington, D. C.

Released: October 18, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8769; Filed, Oct. 23, 1957; 8:50 a. m.]

[Docket No. 12217; FCC 57-1139]

OREGON RADIO, INC.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Oregon Radio, Inc., Salem, Oregon, Docket No. 12217, File No. BMPCT-4564; for extension of time to complete construction of television station KSLM-TV.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 16th day of October 1957;

The Commission having under consideration the above-entitled application of Oregon Television, Inc., for an extension of time to complete construction of Television Station KSLM-TV, Channel 3, Salem, Oregon; and

It appearing that on September 30, 1953, the Commission granted application (BPCT-1180) of Oregon Radio, Inc., for a permit to construct a new television station on Channel 3 at Salem, Oregon; that said permit specified the construction of the station was to begin by November 30, 1953, and to be completed by May 30, 1954; that based upon successive applications of Oregon Radio, Inc., the Commission granted several extensions of time for completion of the station; that on September 26, 1956, the Commission granted an application of Oregon Radio, Inc., (BMPCT-4171) to extend the completion of construction date to March 27, 1957; that on February 26, 1957, the applicant filed the above-entitled application; that on June 27, 1957, the applicant was notified by letter that the Commission was unable to find that the applicant had been diligent in proceeding with the construction of its station since it was last granted an extension of completion date or that it had been prevented from commencing construction by causes not under its control; and that applicant was given an opportunity to reply to said letter and to request a hearing on its application; and

It further appearing that the applicant replied to the Commission letter on July 8, 1957, requesting that its subject application be designated for hearing to afford the applicant an opportunity to present evidence of its earlier inability to construct the television station and its willingness to proceed with construction, and requesting also that its pending application (BMPCT-4687) for modification of construction permit for Television Station KSLM-TV be consolidated for hearing with the above-captioned application; and

It further appearing that upon consideration of the above-entitled application and the above correspondence the Commission is unable to determine that a grant of said application would be in the public interest; and

It further appearing that a hearing on the above-mentioned modification application of Oregon Radio, Inc., would be premature prior to a determination on its above-captioned extension application and that consideration of said modification application should properly be deferred until such determination; and

It further appearing that C. H. Fisher, d/b as Salem Television Company, Salem, Oregon, has requested that the subject application of Oregon Radio, Inc., be designated for hearing, and has requested that he be made a party to the hearing on said application; and

It further appearing that C. H. Fisher is not a party in interest within the meaning of section 309 (b) of the Communications Act of 1934, as amended, and that the public interest would be better served, and C. H. Fisher's interest would at the same time be adequately safeguarded, by restricting his participation to the presentation of evidence as provided in § 1.723 of the Commission's rules;

It is ordered, That the above-entitled application is designated for hearing at the Commission's offices in Washington, D. C. at a time to be specified in a subsequent order, upon the following issues:

1. To determine whether or not Oregon Radio, Inc., has been diligent in proceeding with the construction of television station KSLM-TV as authorized in its construction permit File No. BMPCT-4171.

2. To determine whether or not Oregon Radio, Inc., has been prevented from completing construction of television station KSLM-TV as authorized in its construction permit File No. BMPCT-4741 by causes not under its control within the meaning of section 319 (b) of the Communications Act of 1934, as amended.

3. To determine whether a grant of the above-entitled application would serve the public interest, convenience and necessity.

It is further ordered, That the request of C. H. Fisher to be made a party is denied.

It is further ordered, That to avail itself of the opportunity to be heard, Oregon Radio, Inc., pursuant to § 1.387 of the Commission's rules, in person or by an attorney, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

It is further ordered, That the request of Oregon Radio, Inc., that its pending application (BMPCT-4687) for modification of its construction permit be consolidated for hearing with the above-entitled application, is denied.

Released: October 21, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-8770; Filed, Oct. 23, 1957; 8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-13536]

MIDWEST OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

OCTOBER 18, 1957.

Midwest Oil Corporation (Midwest), on September 20, 1957, tendered for filing proposed changes in its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, dated September 18, 1957.

Purchaser: Texas Eastern Transmission Corporation.

Rate schedule designation: Supplement No. 3 to its FPC Gas Rate Schedule No. 8. Supplement No. 3 to its FPC Gas Rate Schedule No. 9. Supplement No. 4 to its FPC Gas Rate Schedule No. 9.

Effective date:[1] October 21, 1957.

In support of the proposed rate increases, Midwest states that the amount of the increases in the low initial prices in the contract is fixed from the inception of the contract, is not of the revenue-sharing or favored-nation type, and is advantageous to both buyer and seller.

Midwest requests waiver of the 30-day notice period provided in the Natural Gas Act in order that the increase may become effective as of November 1, 1956, as provided by the contract.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges.

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[1] The stated effective date is the first day after expiration of the required 30 days' notice.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until October 22, 1957, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

By the Commission.

[SEAL] MICHAEL J. FARRELL, *Secretary.*

[F. R. Doc. 57-8742; Filed, Oct. 23, 1957; 8:45 a. m.]

[Docket No. G-13146]

TENNESSEE GAS TRANSMISSION CO. AND ALGONQUIN GAS TRANSMISSION CO.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 18, 1957.

Take notice that on August 27, 1957, Tennessee Gas Transmission Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin) filed in Docket No. G-13146 a joint application for a certificate of public convenience and necessity authorizing (1) the exchange of natural gas between applicants and (2) the construction and operation by Algonquin of certain facilities appurtenant to its existing transmission line in Danbury, Connecticut, to serve gas to The Housatonic Public Service Company (Housatonic) for the account of Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

At present Tennessee sells gas to Housatonic at Shelton, Connecticut. Housatonic operates a 20-mile long pipeline from there to the Danbury market area. This line is no longer fully adequate for the gas requirements of Danbury. In the future, as demand grows, it will become increasingly inadequate. A new pipeline paralleling the old would cost over one million dollars. Algonquin estimates that for $36,220 it can build a tap and metering station on its 24-inch main line which passes through Danbury and supply the amount of gas needed for emergencies and to overcome the deficiency of the old line. Tennessee would, under the terms of a 15-year contract, return equivalent volumes of gas to Algonquin at one of three existing interconnections located at Southington, Connecticut, Ashland, Massachusetts; and Bergen County, New Jersey.

Algonquin proposes to construct the tap with metering and regulating appurtenances on its 26-inch pipeline on a site provided by Housatonic which will then reimburse Algonquin for the cost and will then own the station. Algonquin will rent the station from Housatonic for one dollar per year and will operate and maintain it.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on November 12, 1957 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's Rules of Practice and Procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before November 8, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] MICHAEL J. FARRELL, *Acting Secretary.*

[F. R. Doc. 57-8743; Filed, Oct. 23, 1957; 8:46 a. m.]

[Docket No. G-12446 etc.]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

NOTICE OF HEARING

OCTOBER 18, 1957.

In the matters of Texas Eastern Transmission Corporation, Docket No. G-12446; Texas Eastern Penn-Jersey Transmission Corporation, Docket No. G-12447; Continental Oil Company, Docket No. G-12432; M. H. Marr, Docket No. G-12885; Sun Oil Company, Docket No. G-12913; General Crude Oil Company, Docket No. G-12931.

Applications for certificates of public convenience and necessity under the Natural Gas Act were filed by Texas Eastern Transmission Corporation (Texas Eastern), and Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey), to construct and operate certain natural gas transportation pipeline facilities as enlargements of their respective operating facilities.

Continental Oil Company, M. H. Marr, Sun Oil Company, and General Crude Oil Company each has filed an application for a certificate of public convenience and necessity to sell natural gas in interstate commerce to Texas Eastern for resale. Each of the applicants is an independent producer of the natural gas to be sold.

Notice of the filing of the foregoing applications and their consolidation for purposes of hearing has been given including publication in the FEDERAL REGISTER on August 21, 1957 (22 F. R. 6726-6727).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on November 19, 1957, at 10:00 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G. Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications.

[SEAL] MICHAEL J. FARRELL, *Acting Secretary.*

[F. R. Doc. 57-8744; Filed, Oct. 23, 1957; 8:46 a. m.]

[Docket No. G-13538]

PAN AMERICAN PETROLEUM CORP. ET AL.

ORDER GRANTING REQUEST FOR RECONSIDERATION OF REJECTION OF RATE FILING, ACCEPTING FILING, ORDERING HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 18, 1957.

Pan American Petroleum Corporation (Operator) et al. (Pan American), on September 20, 1957, filed a request for reconsideration of the Commission's action of August 23, 1957, in rejecting, as prematurely filed, Supplement No. 18 to Pan American's FPC Gas Rate Schedule No. 57, which was tendered for filing on August 14, 1957. The rejected supplement provides for an increased rate for sales of natural gas to Phillips Petroleum Company (Phillips), and results from the effect of a resale price escalation clause in Pan American's contract with Phillips which was "triggered" by an increase resulting from a similar clause in Phillips' FPC Gas Rate Schedule No. 4 covering the sale of gas to Michigan-Wisconsin Pipe Line Company. By Commission order issued August 16, 1957, in Docket No. G-13069, Phillips' increased rate as proposed in Supplement No. 21 to its FPC Gas Rate Schedule No. 4 was suspended until February 15, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

While the increased rate and charge tendered by Pan American has not been shown by Pan American to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful, it is appropriate that it be accepted for filing and its effectiveness be deferred until such time as Phillips' rate increase becomes effective.

The Commission finds:

(1) The request for reconsideration of the Commission's action of August 23, 1957 in rejecting Supplement No. 18 to Pan American's FPC Gas Rate Schedule No. 57 should be granted and said supplement permitted to be filed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change and that Supplement No. 18 to Pan American's FPC Gas Rate Schedule No. 57 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The aforementioned request for reconsideration filed by Pan American on September 20, 1957 is hereby granted and Supplement No. 18 to Pan American's FPC Gas Rate Schedule No. 57 is accepted for filing.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 18 to Pan American's FPC Gas Rate Schedule No. 57.

(C) Pending such hearing and decision thereon, said supplement is hereby suspended and the use thereof deferred until February 16, 1958, or until one day after such time as the increased rate of Phillips Petroleum Company under Supplement No. 21 to its FPC Gas Rate Schedule No. 4 is placed in effect in Docket No. G-13069 pursuant to the provisions of the Natural Gas Act, if Phillips does not move to make said Supplement No. 21 to its Rate Schedule No. 4 effective, subject to refund, as of February 15, 1958.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-8757; Filed, Oct. 23, 1957; 8:48 a. m.]

[Docket No. G-13541]

COLORADO INTERSTATE GAS CO.

ORDER PROVIDING FOR HEARING AND SUSPENDING PROPOSED REVISED TARIFF SHEETS

OCTOBER 18, 1957.

On September 19, 1957, Colorado Interstate Gas Company (Colorado) tendered for filing Fourth Revised Sheets 5, 8, and 11, and Third Revised Sheet No. 13g in Colorado's Tariff, Original Volume No. 1, and Second Revised Sheet No. 2 of Colorado's Tariff, First Revised Volume No. 2, and Third Revised Sheet No. 2 in Colorado's Tariff, Original Volume No. 3. Fourth Revised Sheet 11 and Third Revised Sheet 13g pertain to sales of gas for resale for industrial use only. Colorado proposes an effective date of October 21, 1957, for the tendered tariff sheets.

The aforesaid revised tariff sheets pertain to gas sold for resale for general service, pipeline service, special use, and for industrial use only, and increase the rates for such classes of sale, subject to the jurisdiction of the Commission, in the approximate amount of $2,553,000 per year over those rates presently being collected pursuant to undertakings filed in proceedings in Docket Nos. G-2260, G-2576, and G-11717.

Colorado alleged as reason for these proposed increased rates that it will experience increased purchased gas costs, due partly to the proposed increased rates filed by Pacific Northwest Pipeline Corp. (Pacific) in Docket No. G-13202, and suspended by order of the Commission on September 4, 1957, and also due partly to change in accounting in reference to deferred charges arising from sales made by Colorado to El Paso Natural Gas Company of gas purchased from Pacific. Colorado stated that increased rates proposed by its filing tendered on September 19, 1957, are based upon the same basis and contentions as asserted by Colorado in Docket No. G-11717, and that except for difference in the dollar amount of these increased rates proposed herein the same reasons for increase apply as submitted by Colorado in Docket G-11717.

On October 4, 1957, the Secretary of the Commission rejected the proposed filing made by Colorado on September 19, 1957, upon the ground, among others, that Colorado had failed to submit all of the information prescribed by the Regulations of the Commission in reference to proposals for increased rates. On October 18, 1957, Colorado refiled its proposed revised tariff sheets, together with additional information relating to the proposed increased rates. Colorado also filed a request for waiver of the Commission's Regulations pertaining to long form rate filing.

The increased rates and charges proposed by Colorado in the revised tariff sheets covering sales of gas for resale subject to the jurisdiction of the Commission and filed on September 19, 1957, and October 18, 1957, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds:

(1) It would be appropriate and in the public interest to grant Colorado's request for waiver of Commission Regulations in reference to Section 154.63 pertaining to data submitted in reference to proposed changes in tariffs.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing, pursuant to the authority contained in section 4 of such act, concerning the lawfulness of the rates, charges, classifications and services provided in Colorado's FPC Gas Tariffs and contracts related thereto, and as proposed to be amended by Fourth Revised Sheets 5, 8, and 11, and Third Revised Sheet No. 13g in Original Volume No. 1, Second Revised Sheet No. 2 in Revised Volume No. 2, and Third Revised Sheet No. 2 in Original Volume No. 3, and that said tariff sheets, excepting Fourth Revised Sheet No. 11 and Third Revised Sheet No. 13g in Original Volume No. 1, be suspended as hereinafter ordered, and the use thereof be deferred pending hearing and decision thereon, except as they may become effective as provided by the Natural Gas Act.

The Commission orders:

(A) Waiver in part of the requirements of § 154.63 of the Commission's Regulations pertaining to data submitted in connection with proposed tariff changes is granted to Colorado in this instance.

(B) Pursuant to the authority contained in the Natural Gas Act, particularly sections 4 and 15 thereof, a public hearing be held, commencing on a date to be designated by notice from the Secretary of the Commission, in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the lawfulness of the rates, charges, classifications, and services contained in Colorado Interstate Gas Company's FPC Gas Tariff and contracts related thereto, and as proposed to be amended by the aforesaid revised tariff sheets tendered by Colorado on September 19, 1957, and October 18, 1957, pertaining to sales of natural gas for resale, subject to the jurisdiction of the Commission.

(C) Pending such hearing and decision thereon, Colorado Interstate Gas Company's proposed Fourth Revised Sheets 5 and 8, in Original Volume No. 1, Second Revised Sheet No. 2 in Revised Volume No. 2, and Third Revised Sheet No. 2 in Original Volume No. 3 of its FPC Gas Tariff be and the same are hereby suspended and the use thereof deferred until February 5, 1958, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-8758; Filed, Oct. 23, 1957; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24FW-1102]

GIANT PETROLEUM CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

OCTOBER 18, 1957.

I. Giant Petroleum Corporation, a Delaware corporation, Room 1-C, 225 East 46th Street, New York, New York, filed with the Commission on July 22, 1957, a notification on Form 1-A and an offering circular, and subsequently filed amendments thereto, relating to an offering of 150,000 shares of its 10 cent par value common stock at $2.00 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

(1) The failure to disclose that the public offering price has no reasonable relation to the net value of the underlying assets to be acquired from the promoters.

(2) The failure to disclose that the issuer's net income per share of outstanding stock is almost negligible despite claims of productive properties.

(3) The inadequate and misleading information concerning the Cox lease, particularly

(a) The failure to set forth the actual net production accruing to the issuer's interest during each of the past months the properties have been productive.

(b) The failure to qualify information on page 7 concerning daily allowable production by disclosing that the wells did not make their allowables between March and July, 1957.

(c) The failure to set forth a reasonable and reliable estimation of reserves net to the issuer.

(d) The statement on page 8 relating to recoverable reserves from two wells is not supported by adequate factual basis.

(4) The inadequate and misleading information concerning the T. B. Autery Ranch, particularly

(a) The statement on page 10 relating to the owner's one-quarter royalty interest is misleading in that the owner's interest is actually one-fourth of one-eighth, or a 1/32d royalty interest.

(b) The statement on page 12 that the property is a "good wildcat prospect" is misleading in the absence of sufficient factual basis.

(c) The statement on page 12 inferring favorable prospects because of its proximity to the Continental-Noelke well is misleading in failing to disclose that that well has never been produced.

(d) The failure to disclose on page 12 that before Giant could drill on the property it would have to contract with the owners of the remaining ¾ mineral interests.

(5) The inadequate and misleading information concerning the Latch Lease, particularly

(a) The failure to disclose the distance to the nearest oil production and the nearest dry holes in each general direction.

(b) The statement on page 14 to the effect that the lease is "very well located" is misleading in the absence of sufficient factual basis.

(c) The inference on page 15 that operators drilling wells in 1940 used poor completion methods is misleading in that it is without factual basis and inaccurate.

(6) The statements on pages 16 to 19 relating to a nonproductive well on the Sutton Lease are misleading by failure to disclose that the well was not drilled on favorable geological structure but was drilled at random, thus making future prospects unpredictable.

(7) The failure to disclose on page 19 concerning the Tom Green County Lease that the Phillips Petroleum Company does not ordinarily "farm out" acreage if there is a reasonable chance for such acreage to yield average or better than average wells.

(8) The misleading and inaccurate information at pages 49–52 concerning the Sherrill report on the Tom Green County Lease, particularly

(a) The failure to state that Mr. Sherrill has an interest in the lease and therefore he cannot be considered as disinterested or independent.

(b) The failure to include a geologic structural map.

(c) The failure to disclose on pages 49 to 50 that the Phillips 1–A well has averaged only 15 barrels per day since its completion despite an initial production of 170 barrels per day.

(d) The statement on page 52 that development could establish reserves of two to four million barrels of oil is misleading in view of the fact that no overall profitable production has been obtained in the immediate area as yet.

(9) The misleading and inaccurate information on pages 20 to 21 concerning the Smalley Lease, particularly

(a) The failure to disclose the number of abandoned oil wells and dry holes on the lease.

(b) The failure to disclose that it would be unusual if a lease of value remained unexploited for secondary recovery possibilities in an area that has been extensively exploited in this manner for the past 23 years.

(10) The misleading and inaccurate information on pages 22 to 24 concerning the Bateman lease, particularly

(a) The failure to disclose that the lease is located in a specific area that has been waterflooded for 20 or so years and that Phillips Petroleum Company, a foremost secondary recovery operator in the field, would not have abandoned or sold this lease if the lease had any particular profit possibilities in the future.

(b) The statement on page 23 concerning the north and south water flood projects and the inference that the Bateman lease has similar possibilities is misleading in that it is not known what past recovery from this lease was by means of waterflooding and there is no showing that issuer's lease was or is comparable to the north and south waterfloods.

(c) The inclusion of statements attributed to the Jay Robertson report is misleading in that it infers favorable possibilities which are not supported by the report.

(d) The map of the Bateman lease is misleading in showing the lease to include 160 acres of producing oil wells when, in fact, the lease only actually covers 50 acres which have no presently producing wells.

(e) The statement on page 22 indicating that the sum of $25,000 is payable to Mr. Bateman out of production for his $\frac{7}{128}$ths interest is misleading in view of the fact that there is no reasonable possibility that oil in sufficient value ($457,144) will ever be produced to liquidate the payment.

(11) The statements on page 28 that the Board of Directors determined that the value of properties to be acquired from the promoter equalled at least the par value of the shares issued to him plus $100,000 or a total of $130,000 is misleading in that the reasonable value of the properties over and above the indebtedness assumed by the issuer does not approach $130,000.

(12) The failure to disclose the expenditures on the Cox Lease in the table of oil sales for that lease.

(13) The failure to include maps for the Branyon district and Sutton County acreage that are legibly prepared so as to show clearly the location of the issuer's acreage.

(14) The failure to disclose as to each area and property the interest of the promoters and their families therein which may be enhanced through the issuer's operations.

III. *It is ordered*, Pursuant to Rule 261 (a) of the General Rules and Regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within 30 days herefrom; that within 20 days after receipt of such request, the Commission will, or at any time upon it own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary*.

[F. R. Doc. 57-8750; Filed, Oct. 23, 1957; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 21, 1957.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within

15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34244: *Methanol from Sterlington, La., to Chicago, Ill.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7139), for interested rail carriers. Rates on methanol (methyl alcohol), tankcar loads from Sterlington, La., to Chicago, Ill., switching district.

Grounds for relief: Water and market competition.

Tariff: Supplement 117 to Agent Kratzmeir's tariff I. C. C. 4064.

FSA No. 34246: *Frozen citrus fruit sections from Florida.* Filed by O. W. South, Jr., Agent (SFA No. A3547), for interested rail carriers. Rates on citrus fruit sections, frozen, in containers in barrels or boxes, in bulk in barrels, or in metal cans in crates, carloads from points in Florida to points in southern, official (including Illinois) and western trunk line territories.

Grounds for relief: Short-line distance formula, grouping and motor truck competition.

Tariff: Supplement 6 to Agent Spaninger's tariff I. C. C. 1578.

FSA No. 34247: *Frozen citrus fruit juices form Deland Freight Agency, Fla.* Filed by O. W. South, Jr., Agent (SFA No. A3548), for interested rail carriers. Rates on frozen citrus fruit juice and pulp, pineapple juice, and citrus fruit sections, carloads from Deland Freight Agency, Fla., to points in southern, official (including Illinois), and western trunk line territories.

Grounds for relief: Short-line distance formula, grouping, market and motor truck competition.

Tariff: Supplement 6 to Agent Spaninger's tariff I. C. C. 1578.

FSA No. 34248: *Cast iron pipe and fittings from the South.* Filed by O. W. South, Jr., Agent (SFA No. A3549), for interested rail carriers. Rates on cast iron pipe and fittings, and related articles, carloads from points in southern territory to points in southwestern, western trunk line and Illinois territories.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 129 to Agent Spaninger's tariff I. C. C. 1374.

AGGREGATE OF INTERMEDIATES

FSA No. 34245: *Methanol from Sterlington, La., to Chicago, Ill.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7140), for interested rail carriers. Rates on methanol (methyl alcohol), tankcar loads from Sterlington, La., to Chicago, Ill., switching district.

Grounds for relief: Water and market competition.

Tariff: Supplement 117 to Agent Kratzmeir's tariff I. C. C. 4064.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-8746; Filed, Oct. 23, 1957; 8:46 a. m.]

FOURTH SECTION APPLICATION FOR RELIEF; CORRECTION

OCTOBER 21, 1957.

Application filed by O. W. South, Jr., Agent, for interested rail carriers, published on Page 8249 issue of October 18, 1957, No. 203, was erroneously assigned FSA No. 34230. The correct application number is FSA No. 34231.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-8745; Filed, Oct. 23, 1957; 8:46 a. m.]